MEMORANDUM Agenda Item No. 7(N)(1)(A)

To: Honorable Chairperson and Members
Board of County Commissioners

Date: September 9, 2003

From: George M. Burgess
County Manager

Subject: Approval of Land Transfer from City of North Miami to Preserve Partners, LTD. and Conformity with CDMP

RECOMMENDATION

It is recommended that the Board approve the attached resolution consenting to the transfer of 193 acres of land owned by the City of North Miami to Preserve Partners, LTD. This recommendation is in reliance on correspondence from the City of North Miami assuring the County that the City will 1) providing notice to the County of all public hearings and proceedings at which the City is to consider land use matters affecting the subject site; 2) requiring the developer of any portion of said property to record I the public records a notice that the proposed development is within one mile of a wastewater treatment facility of County-wide significance and that notice shall be given to and signed by buyers contemporaneous with signing purchase contracts within said development; and 3) complying with all terms and conditions of the environmental remediation Consent Agreement with Miami-Dade County which is reverenced below. Furthermore, it is understood that this approval does not imply approval or otherwise prejudice any future or subsequent actions of the Board of County Commissioners or its agencies regarding development of this property.

BACKGROUND

According to Section 2-11.2 of the County Code, municipalities selling or conveying for private use real property that is ten acres or larger must first submit the proposed conveyance to the Miami-Dade County Board of County Commissioners for review and consideration for conformity with the Comprehensive Development Master Plan (CDMP), and for determination that the conveyance is not contrary to the best interests of the public.

The City of North Miami and Preserve Partners, LTD. have entered into an agreement to lease (Munisport Agreement – See Exhibit A) whereby the City proposes to lease to Preserve Partners, for a term of 99 years, a 193-acre property owned by the City, formerly known as the Munisport Landfill site. Pursuant to the agreement and subject

to receiving all necessary land use approvals, Preserve Partners will develop a mixed-use residential/commercial project on the subject property consisting of no less than 2,800 residential units, ranging in height up to 25 stories, 20,000 square feet of commercial use, and a 150-room hotel; subject to subsequent proposed development approvals, additional development could occur. Additionally, off-site improvements and benefits to the City by the land transfer would provide: funding by Preserve Partners to the City to enable the City of buy out the Miami-Dade County Public School District's leasehold interest in the North Miami Athletic Stadium located north of the project site and abutting the southeast corner of the North District Wastewater Treatment Plan (WWTP); construction of a Charter School for grades 9-12 on city-owned land adjacent to the stadium site and located north of the proposed project; development of a "National Governing Body" (NGB) Training facility for certain Olympic sports; renovation and expansion of the existing City library; the provision of a minimum of 2,800 units of affordable housing elsewhere within the City of North Miami; developer funding to form a City Community Redevelopment Agency (CRA); and developer funding for start-up costs for the permitting of an Environmental Park parcel as a salt-water wetlands mitigation bank. The establishment of a CRA will require a separate and independent action by the Board of County Commissioners prior to its creation. In addition, established review and approval procedures for locating and/or construction of a school in this vicinity are not waived as a result of this action.

To effectuate development of the Property consistent with the proposed uses described in the lease agreement, the City intends to amend the City Zoning Ordinance to change the district boundary designation of the property from Public Use to Public Use-Planned Unit Development (PU-PUD). The PU-PUD zoning designation for the Property would be consistent with the City's Comprehensive Plan PU-PUD land use designation on the Future Land Use Plan Map. The City has also filed additional applications to amend the City's Comprehensive Plan, pursuant to Chapter 163, Florida Statutes, to expand the list of permitted uses for the PU-PUD land use category in the Land Use Element, designating the area encompassing the Property as the North Miami Urban Infill Regional Activity Center on the City's Future Land Use Plan Map, and creating a citywide Urban Infill Area (UIA) and Transportation Concurrency Exception Area (TCEA). The County's Department of Planning and Zoning has reviewed the proposed plan amendments, in accordance with the State's prescribed review process, and found them consistent with the County's Comprehensive Development Master Plan.

Additionally, the lease agreement provides for Preserve Partners, LTD. to assume responsibility for remediation of the contaminated landfill site and to comply with and complete the environmental remediation of the subject property at the developer's sole cost and expense (Section 12.3, page 30, Exhibit A). The City of North Miami and the Miami-Dade County Department of Environmental Resources Management entered into a Consent Agreement dated February 10, 1998 (See Exhibit B), which establishes that the City of North Miami has a legal responsibility, as the owner of the Property, to properly close the Munisport Landfill, to prevent contaminated groundwater discharging from the landfill from having an unacceptable adverse effect on the mangrove preserve and on Biscayne Bay, to remediate contaminated groundwater and

surface water, to restore and maintain the wetlands adjacent to the landfill that were altered by landfill operations, and to breach a dike between the mangrove preserve and the altered wetlands located north and west of the mangrove preserve, at an appropriate time. Notwithstanding the lease agreement, the City remains responsible for the committed environmental remediation requirements contained within the Consent Agreement.

The Water and Sewer Department operates the North District Wastewater Treatment Plant which is located north of NE 151 Street and adjacent to the proposed project site. It is important that the land in the vicinity of water and wastewater treatment facilities is developed for a use that is compatible with the continued operation or planned expansion of said facilities. The City has provided a letter (attached as Exhibit C), which provides assurances that it will continue to recognize that the wastewater treatment plant is a public facility of County-wide significance, and that as such, the City will take into account the presence and operations of the facility when considering comprehensive development plan amendment applications, zoning applications and other land use matters affecting the subject site. The City has also indicated that it will provide notice to the County of all public hearings and proceedings at which the City considers such land use decisions. In addition, the City has indicated that it will require the developer of any portion of said property to record in the public records a notice that the proposed development is within one mile of a wastewater treatment facility of County-wide significance. This notice is to be given to and signed by buyers contemporaneous with signing purchase contracts within said development.

The attached resolution authorizes the conveyance of property, pursuant to Section 2-11.2 of the Miami-Dade County Code of Ordinances, from the City of North Miami to Preserve Partners LTD., finding the transfer of land in conformity with the County's Comprehensive Development Master Plan (CDMP), and finding the transfer is in the best interests of the public.

MEMORANDUM

(Revised)

TO: Honorable Chairperson and Members
Board of County Commissioners

DATE: September 9, 2003

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No.7(N)(1)(A)

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(N)(1)(A)
9-9-03

RESOLUTION NO. _____

RESOLUTION APPROVING AND CONSENTING TO THE TRANSFER OF PROPERTY OWNED BY THE CITY OF NORTH MIAMI TO PRESERVE PARTNERS, LTD.

WHEREAS, Section 2-11.2 of the Code of Miami-Dade County states that no municipal corporation in Miami-Dade County, Florida shall sell or convey all or any part of any tract of real property ten (10) acres or more in contiguous area until such time as the Board of County Commissioners shall have approved and consented to such sale or transfer; and

WHEREAS, such review and consideration shall be based upon full and complete information and data concerning the contemplated sale or transfer of such real property that is submitted to the Board of County Commissioners; and

WHEREAS, the City of North Miami, Florida (the City) is the owner of the real property described in the letter and Agreement attached hereto as Exhibit "A" (the "Property"); and

WHEREAS, the City wishes to convey the Property to Preserve Partners, Ltd., under a long term lease pursuant to that agreement between the City of North Miami and Preserve Partners, Ltd., dated November 26, 2002, the same being real property ten (10) acres or more in contiguous area; and

WHEREAS, pursuant to ss.163.3184 and 163.3187, Florida Statutes the City has filed with the Department of Community Affairs amendments to the North Miami Comprehensive

Plan establishing criteria for the designation of a Regional Activity Center and for the designation of the North Miami Urban Infill Regional Activity Center, wherein the Property is located, and creating a citywide Urban Infill Area (UIA) and citywide Transportation Concurrency Exception Area (TCEA), Plan; and

WHEREAS, it is stated under "Legislative Intent" in the Adopted Components of the Comprehensive Development Master Plan (CDMP) of Miami-Dade County that it is the intent of the Board of County Commissioners that the right of all municipalities in Miami-Dade County to enact and administer comprehensive planning and land development regulation programs to govern development-related activities solely within their respective incorporated jurisdictional boundaries as provided by Chapter 163, Part 2, Florida Statutes, is generally reserved and preserved to the municipalities; and

WHEREAS, it is further stated as Legislative Intent that the CDMP shall not supersede authority of incorporated municipalities to exercise all powers relating solely to their local affairs provided that among the fundamental growth management components of the CDMP that are necessary to carry on a central metropolitan government in Miami-Dade County and that serve as minimum standards for zoning, service, and regulation to be implemented through all municipal comprehensive plans and land development regulations, that policies which provide that the County shall maintain and utilize its authority provided by the Miami-Dade County Charter to maintain, site, construct and operate pubic facilities in incorporated and unincorporated areas of the County; and

WHEREAS, Miami-Dade County Water and Sewer Department (WASD) owns and operates the North District Wastewater Treatment Plant north of and adjacent to the proposed project site across NE 151 Street; and

WHEREAS, CDMP Water and Sewer Subelement Policy 1F provides that the County shall use all practical means to assure that land in the vicinity of water and wastewater treatment facilities is developed for a use that is compatible with the operation of said facilities, and the County shall discourage changes to the Land Use Plan map or land development regulations which would permit land uses that are incompatible with the continued operation or planned expansion of these facilities, and residential uses shall be considered incompatible with these public facilities where spillovers, particularly noise and odor, can reasonably be expected; and

WHEREAS, in view of such requirements, the City Manager has provided a letter dated July 8, 2003 recognizing that the wastewater treatment plant is a public facility of County-wide significance, and that as such, the City must take into account the presence and operations of the facility when considering comprehensive development plan amendment applications, zoning applications, and other land use matters affecting the subject site, and has also agreed to provide notice to the County of all public hearings and proceedings at which the City considers such land use decisions; and

WHEREAS, it is in the best public interest to insure that future land owners and residents within this development are aware that Miami-Dade County's North District Wastewater Treatment Plant is located within one mile of this property; and

WHEREAS, the City of North Miami and the Miami-Dade County Department of Environmental Resources Management (DERM) entered into a Consent Agreement dated February 10, 1998, which is attached hereto and incorporated herein by reference as Exhibit B, which establishes that the City of North Miami has a legal responsibility, as the owner of the Property, to properly close the Munisport Landfill, to prevent contaminated groundwater discharging from the landfill from having an unacceptable adverse effect on the mangrove preserve and on Biscayne Bay, to remediate contaminated groundwater and surface water, to restore and maintain the wetlands adjacent to the landfill which were altered by landfill operations, and to breach a dike, between the mangrove preserve and the altered wetlands located north and west of the mangrove preserve, at an appropriate time; and

WHEREAS, notwithstanding Sections 12.3 and 12.5 of the Lease Agreement which transfers the City's responsibilities and obligations for remediation of the site and closure of the landfill to Preserve Partners, LTD., the City remains obligated to fulfill the responsibilities contained in the binding Consent Agreement between Miami-Dade County DERM and the City; and

WHEREAS, the conveyance of the property must be in conformance with the Miami-Dade County Comprehensive Development Master Plan (CDMP) and the City of North Miami Comprehensive Plan; and

WHEREAS, the conveyance of the Property is in the best interests of the public to facilitate remediation of the contaminated Property and development of the Property as proposed and will further urban infill development objectives of both the City and the County,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, the Board, in reliance upon assurances contained in a letter dated July 8, 2003, from the City of North Miami City Manager, finds the transfer of land owned by the City of North Miami to Preserve Partners, Ltd. in conformity with the County's Comprehensive Development Master Plan and not contrary to the best interest of the public.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Dr. Barbara Carey-Shuler, Chairperson
Katy Sorenson, Vice-Chairperson

Bruno A. Barreiro	Jose "Pepe" Diaz
Betty T. Ferguson	Sally A. Heyman
Joe A. Martinez	Jimmy L. Morales
Dennis C. Moss	Dorrin D. Rolle
Natacha Seijas	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 9th day of September, 2003. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney
as to form and legal sufficiency.
Thomas Goldstein

By:_____
Deputy Clerk

EXHIBIT "A" 118847

City of North Miami

776 Northeast 125th Street, P.O. Box 610850, North Miami, Florida 33261-0850

(305) 893-6511

March 25, 2003

Mr. Steve Shiver
Miami-Dade County Manager
Stephen P. Clark Government Center
111 N.W. First Street, 28th Floor
Miami, Florida 33128

Re: Proposed Resolution Approving Long Term Lease Between the City of North Miami (the "City") and Swerdlow Boca Development, LLC ("SBD")

Dear Mr. Shiver:

The City has entered into an agreement to lease to SBD, for a term of 99-years, a 193-acre ± property owned by the City (see attached legal description) (the Property). A copy of that agreement is enclosed as Exhibit "A". Pursuant to the agreement, SBD will develop a mixed use residential/commercial project on the Property consisting of approximately 4,500 residential units and 100,000 square feet of commercial use and one or two hotels. Section 2-11.2 of the Miami-Dade County Code of Ordinances requires as follows:

> No municipal corporation in Miami-Dade County, Florida, shall sell or convey for private use or to private ownership all or any part of any tract of real property ten (10) acres or more in contiguous area owned by it that has been or is hereafter acquired by said municipality for a pubic or municipal purpose, until full and complete information and data concerning the contemplated sale or transfer of such real property shall have been first submitted to the Board of County Commissioners for a review and consideration, and the Board of County Commissioners shall have approved and consented to such sale or transfer as being in conformity with the comprehensive plan of development for Miami-Dade County and not contrary to the best interests of the public.

Pursuant to the requirements of Section 2-11.2 of the Miami-Dade Code of Ordinances, the City requests that you place this proposed conveyance of the Property on the next available County Commission agenda for its consideration and approval.[1]

We respectfully submit that the proposed transfer of the Property complies with the criteria set forth in Section 2-11.2 of the Miami Dade Code of Ordinances for County approval of the transfer, which are: (1) the transfer of the land is in conformity with the comprehensive plan of development for Miami-Dade County and (2) the transfer is not contrary to the best interests of the public.

BACKGROUND

The history and background of the subject site is a long and controversial one. The present proposal for development, the City believes, will offer a viable solution which transforms this land into a valuable asset for the City and the community of Miami-Dade County, as a whole.

Supported by Federal and State legislation, the City of North Miami purchased 350 acres of land in 1970 and envisioned the development (in part) of a trade and cultural center (the Interamerican Trade And Cultural Center-"Interama") and a municipal recreational facility. In 1972, Munisport, Inc., leased 291 acres of this area from the City of North Miami. Initially, Munisport, Inc. accepted construction debris to raise the elevation of the wetland areas to provide a sub-grade for the anticipated during development of the site. However, financial constraints and demands for a local landfill compelled Munisport, Inc., to abandon their development plans in lieu of accepting additional solid waste for fill material. Eventually, the landfill grew to cover an area of approximately 170 acres, and included an estimated six million cubic yards of solid waste that was accepted between 1974 and 1980.

The State of Florida Department of Environmental Regulation (FDEP) revoked Munisport's landfill operating permit in 1981. The Site, including approximately 291 acres, was listed on the National Priorities List (NPL) on September 8, 1982 and designated a "Superfund" site. A Water Quality and Toxicity Assessment was completed in 1989. In part, this study concluded that the landfill posed no threat to human health. Still, concerns regarding aquatic organisms in the adjacent wetlands remained. In 1990, the EPA issued its Record of Decision (ROD) that explained which cleanup alternatives could be used. At that time, the size of the site remaining on the NPL list was reduced to 33 acres. The ROD contemplated the use of a hydraulic barrier to intercept the discharge of groundwater contaminated by the presence of ammonia to an adjacent mangrove preserve. The EPA and the City of North Miami entered into a Consent Decree for the Cleanup in 1992.

The cleanup mandated by EPA was completed and EPA removed (de-listed) the

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[1] The City's request for the Board of County Commissioners' approval of the transfer of the Property should not be construed as a waiver of any rights under either the case of Kass v. Lewin, 104 So.2d 572 (Fla. 1958) or under the provisions of Section 253.033(2), Florida Statutes.

site from the from the NPL in September 1999.

Since that time, the site has continued to be under regulatory scrutiny and has laid fallow. At present, the site is governed by a Consent Order between the City and the Miami-Dade County Department of Environmental Resources Management with groundwater cleanup of ammonia and final site closure pending.

In 2002, the City proposed to lease the site to private development interests to take over cleanup responsibilities for the site and requested proposals for the ultimate reuse of the site. Over a series of 6 months, three qualified developers made presentations to the City Council and to the citizenry of the City at various public meetings and workshops. That process culminated in April of 2002, when the City Commission chose the Swerdlow Group, Inc. to develop the site. On November 26, 2002, a Development Agreement was entered into between the parties that envisioned the cleanup of the site in accordance with regulatory standards and development which would include:

- Between 2,800 and 5,000[2] residential units
- Between 20,000 to 100,000 square feet of commercial space
- Between 150 and 250 hotel units.

In addition the agreement between the City and the developer called for a number of significant "off-site" benefits to the City. These "off-site" benefits included:

- Stadium Site: Upon the execution and delivery of the Lease, the Developer must provide up to $700,000 to buy out the Miami-Dade County Public School's leasehold interest in the North Miami Athletic Stadium located north of the project site.

- Municipal Charter High School: The Developer is responsible for constructing a Charter School for grades 9 through 12 upon the City owned land adjacent to the Stadium Site and located just north of the project site.

- NGB Training Facility ("National Governing Body" for Olympic sports training facility[3]) at a cost of $10 million. Although the parties have agreed to design and value engineer the facilities to not exceed $10 million, the Developer is responsible for all cost overruns. In the event the Developer is unable to obtain the commitment of at least 3 NGB's to relocate to the facility within 12 months following the satisfaction of the conditions in the agreement or in the event the conditions are not satisfied within 5 years following the execution of the Lease,

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[2] At the time of the Agreement, the City Charter limited any building heights on this, or any other site in the City of North Miami, to four (4) stories, which would have resulted in the 2,800 unit project noted. However, on November 12, 2002, the electorate of the City approved a change to its charter (by a 6,531 to 4,017 vote) to allow development of the site to a height of twenty-five stories.

[3] The Olympic sports to be housed in the facility will include, among others, the combat arts of judo, boxing and wrestling.

the Developer shall fund $10 million to construct an active recreational facility or provide subsidies for affordable housing, payable in installments as construction progresses.

- Renovation and Expansion of the Existing Library: Developer is responsible for completing the renovation of the library at a cost of $10 million and the Developer is responsible for all cost overruns. Developer must provide to the City personal guaranties in the aggregate of $10 million to secure the Developer's obligations with respect to the library prior to a date which is 5 years following the execution of the Lease. To the extent the full $10 million is not used to fund the library renovation, the balance is to be paid to the City to fund subsidies for Affordable Housing.

- Affordable Housing: Developer is obligated to develop the same number of Affordable Housing Units within the City as residential units developed in the Project. Developer is obligated to establish a Housing Enterprise which is at least 49% minority owned (with at least 30% of the 49% of the minority owners to be residents of the City) for the development of Affordable Housing. The Developer must fund the capital requirements for the Housing Enterprise. The Developer must provide the City with a $2 million letter of credit within 60 days following the execution of the Lease to secure the Developer's obligations to complete Affordable Housing.

- Community Redevelopment Agency: The Developer agrees to advance to the City the sum of $100,000 at the same time as funding the Initial Payment to be used by the City to fund the costs and expenses of forming the CRA. The CRA is obligated to reimburse the Developer, however, if the Developer is not reimbursed within 5 years following the execution of the Lease, the Developer may offset the $100,000 against its obligations with respect to the library renovation.

- Environmental Park Parcel: Upon the execution of the Lease, Developer is responsible for funding the start up costs for the permitting of the Environmental Park Parcel as a salt water wetlands mitigation bank. Any net proceeds from the sale of the mitigation credits in excess of the cost of the improvements is to be shared with the City equally. The City and Developer agree to attempt to obtain the consent of Miami-Dade County necessary to close the extension of N.E. 135th Street.

- Minority Participation: Developer is obligated to use reasonable efforts to insure affirmative action with respect to qualified minority contractors and contractors whose residence or primary place of business is in North Miami, as well as minority employees and employees whose residence is in North Miami. Developer must, to the extent permitted by law, award at least 22% of the total Project costs (based on total hard construction costs under construction contracts for the Project) to Minority Contractors (as defined in the Lease).

While these "off-site" improvements are directly beneficial to the City, it is also clear that these improvements to the City will redound to the benefit of the entire County.

Conformity with the Comprehensive Plan

The proposed development of the Property is consistent with the Miami-Dade Comprehensive Development Master Plan's (the "CDMP") deference to municipal comprehensive plans in matters dealing with the regulation of land development within municipal boundaries. Section B of the CDMP's Statement of Legislative Intent (copy attached) expresses the County's intent that the CDMP not preempt local comprehensive plans as long as certain "fundamental growth management components of the CDMP" serve as minimum standards for all municipal comprehensive plans. The four core CDMP principles which must be adhered to by all municipal comprehensive plans deal with the Urban Development Boundary (UDB) and Urban Expansion Area (UEA), the development of Urban Centers defined in the CDMP, the mapping of population estimates and distributions, and the construction and operation of public facilities. By the CDMP's own terms, the power to "enact and administer comprehensive planning and land development regulation programs to govern development related activities solely within their respective incorporated jurisdictional boundaries...is generally reserved and preserved to the municipalities."

The City's Comprehensive Plan currently designates the Property as PU-PUD. The proposed mixed use development of the Property will be consistent with the PU-PUD land use designation upon the pending adoption of the City's proposed land use plan amendment which expands the list of permitted uses in the PU-PUD category. Due to the proposed development's consistency with the City's Comprehensive Plan, its adherence to the core principles enunciated in the Miami-Dade CDMP's Statement of Legislative Intent, as well as the CDMP's deference to municipal comprehensive plans in matters concerning local land development regulation, we submit that the transfer of the Property by the City to SBD is consistent with the CDMP.

Best Interests of the Public

As noted above, we further believe that the transfer of the Property to SBD also is in the best interests of the public because it will facilitate the cleanup of a documented contaminated site and will provide significant urban infill development, a policy encouraged by the County Comprehensive Plan. The proposed redevelopment of the Property will ensure that the site is remediated to levels deemed appropriate by the DERM and the Florida Department of Environmental Protection for human habitation on the Property. The cleanup and redevelopment of contaminated sites of such magnitude as that of the Property is of benefit to all County residents. The transfer of the Property from the City to SBD will facilitate the cleanup of the Property and its conversion to a productive tax generating asset as opposed to its current state as an eyesore, as recognized in Policy 1C of the CDMP, which provides as follows:

> Miami-Dade County shall give priority to infill development on vacant sites in currently urbanized areas, and redevelopment of substandard or underdeveloped environmentally suitable urban areas

contiguous to existing urban development where all necessary urban services and facilities are projected to have capacity to accommodate additional demand.

The proposed development of the Property will serve to greatly further this "urban infill" policy. The Property is one of the few remaining large infill parcels in eastern Miami-Dade County and is located in a highly urbanized area where all the necessary urban services and facilities are available. Development of the property will be a significant step towards directing future development "eastward ho" and away from environmentally sensitive lands on the western side of Miami-Dade County.

The City is confident that the conveyance and future development of the Property will benefit both the County and the City by alleviating both governments of the burden of cleaning up a severely contaminated property, encouraging urban infill development, and by helping to revitalize our City's economy. As previously noted, these anticipated benefits have been recognized by our City's residents who voted in overwhelming numbers during the November 2002 elections to support development of the Property. Additionally, the Mayor and City Council are confident that SBD is capable of successfully working in partnership with the City to attain the goals established for the Property. SBD is a partnership of experienced South Florida developers with the expertise and financial strength to undertake a project of the scale of the proposed redevelopment of the Property.

We respectfully request that the Board of County Commissioners consider and approve the transfer of the Property to SBD. Please find enclosed a draft Resolution expressing the Board of County Commissioners approval of the transfer of the Property together with a copy of the agreement. Please schedule this matter for the next available Board of County Commissioners agenda.

Thank you for your assistance with this matter and please call me at (305) 893-6511 if you have any questions.

Sincerely,

Irma J. Plummer
City Manager

IJP:mp

Enclosure – Munisport Agreement

c: Mayor and City Council
John C. Dellagloria, City Attorney
Michael Swerdlow
Clifford A. Schulman

Irmy

ATTACHMENT A

This instrument prepared by, and after recording return to:

Name: Joel K. Goldman, Esq.
Address: 1221 Brickell Avenue
Miami, Florida 33131

02R782593 2002 DEC 16 11

(Space reserved for Clerk of Court)

MUNISPORT AGREEMENT

THIS MUNISPORT AGREEMENT (Agreement) is made and entered into as of the 26th day of November, 2002, between the CITY OF NORTH MIAMI, FLORIDA, a Florida municipal corporation (**City**) and PRESERVE PARTNERS, LTD., a Florida limited partnership (**Developer**).

Introduction and Background

A. In April, 2001, the City issued a Request for Letter of Interest and Qualifications (the **RFQ**) with respect to the development of certain property commonly known as the Munisport Landfill Site and referred to in this Agreement as the "**Preserve Parcel**". The Preserve Parcel is legally described on **Exhibit "A"** and consists generally of an irregularly shaped parcel of land comprising approximately one hundred ninety (190) acres located in the City of North Miami, Miami-Dade County, Florida, and generally bounded by Biscayne Boulevard to the west, N.E. 137th Street to the south, N.E. 151st Street to the north and a tract of approximately ninety (90) acres of environmentally sensitive lands bordering the Florida International University (**FIU**) campus and more particularly described on the sketch attached hereto as **Exhibit "B"** (the **Environmental Park Parcel**) to the east.

B. On July 2, 2001, Developer submitted its Stage I proposal to the City in response to the RFQ.

C. On July 18, 2001, the City invited Developer and two additional respondents to the RFQ to submit Stage II proposals for the redevelopment of the Preserve Parcel.

D. On November 30, 2001, Developer submitted its Stage II proposal for the redevelopment of the Preserve Parcel (the **Developer Proposal**) to the City.

E. On April 23, 2002, at a duly noticed public hearing,

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586 30

the City considered each of the stage II proposals submitted to the City in response to the RFQ and pursuant to the factors and criteria set forth in the RFQ, determined that the Developer Proposal was in the public's interest and in furtherance of the goals of the City and selected the Developer Proposal.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Recitations. The foregoing recitations are true and correct and are incorporated in this Agreement by this reference.

2. Project. Subject to the satisfaction of those conditions precedent set forth in Section 8 of this Agreement and the additional conditions set forth in Section 9 of this Agreement with respect to the Off-Site Improvements (as defined below), the Developer shall develop the Preserve Parcel as a mixed use condominium residential community consisting of the On-Site Improvements, as defined and set forth in Section 2.1 below, and Off-Site Improvements, as defined and set forth in Section 2.2 below (collectively, the **Project**). The conceptual plan for the Project is attached as **Exhibit "C"** (the **Concept Plan**). The Concept Plan includes both the proposed phases and the proposed uses of the Project. Developer agrees that the Project shall be developed in substantial accordance with the Concept Plan. Throughout the life of the Project, the Developer and the City will allow flexibility in the eventual build-out of the Project; provided, however, that the Concept Plan shall not be modified without the consent of the City.

2.1 On-Site Improvements. The Project shall include the following on-site improvements (the **On-Site Improvements**):

(i) A minimum number of residential condominium units as required in Section 3.5 of this Agreement; provided, however, that residential rental units may be included in the Project with the consent of the City;

(ii) Clubhouses, pools, tennis courts, parking and related amenities for (i) above as shown on the Concept Plan;

(iii) Not less than thirty-five (35) acres of passive parks, including passive lakes (with no active recreation) as shown on the Concept Plan;

(iv) A hotel, with a minimum of 150 rooms, and which otherwise meets the standards required under Section 7 of this Agreement;

(v) a Town Center (as defined below) with uses appropriate to service the residential development as more particularly set forth in Section 7 of this Agreement and as shown on the Concept Plan; and

(vi) Commercial and retail space as shown on the Concept Plan.

2.2 Off-Site Improvements. The Project shall include the following off-site improvements (the **Off-Site Improvements**):

(i) Upon the execution and delivery of the Lease by the City and Developer, Developer shall provide up to Seven Hundred Thousand Dollars ($700,000.00) to buy out Miami-Dade County Public School's current leasehold interest in the North Miami Athletic Stadium (the **Stadium Site**) for the benefit of the City, which payment shall be deemed a portion of the expenditure required to be made by the Developer under Section 2.2(iii) below. The City shall be responsible for all scheduled and permitted use of the Stadium Site, which shall include use by the Charter School (as defined below) at appropriate times reasonably acceptable to the City. Upon the execution and delivery of the Lease by the City and Developer, the Developer shall, if possible, relocate that certain identification signage for the Roz and Cal Kovens Conference Center and Ronald L. Book Track to an alternative location acceptable to the City;

(ii) A municipal charter high school for grades 9 through 12 (the **Charter School**) upon the City owned land adjacent to the Stadium Site and more particularly described on **Exhibit "D"** (the **Charter School Site**) as provided in Section 9.1 of this Agreement;

(iii) A National Governing Body for olympic sports training facility (the **NGB Training Facility**) for "combative sports" (i.e. boxing, wrestling and judo) upon the site more particularly described on **Exhibit "E"** (the **NGB Training Site**), with a total cost to Developer of Ten Million and No/100 Dollars ($10,000,000.00), as provided in, and subject to, Section 9.2 of this Agreement ;

(iv) Renovation and expansion of the existing City library, with a total cost to Developer of Ten Million and No/100 Dollars ($10,000,000.00), as provided in, and subject to, Section 9.3 of this Agreement; and

(v) Affordable housing, both new construction and

rehabilitation within the City as provided in Section 9.4 of this Agreement.

(vi) For a period of ten (10) years following the execution and delivery of the Lease by the City and Developer, provided City is not in default under this Agreement or the Lease, Developer shall advance against the Additional Rent (as defined in the Lease) payable to the City, an aggregate amount not to exceed the sum of Five Million and No/100 Dollars ($5,000,000.00) to be used by the City solely for the following purposes: (i) up to One Million Five Hundred Thousand and No/100 Dollars ($1,500,000.00) in the aggregate to fund (x) any costs of completing the renovation and expansion of the City library in excess of the Ten Million and No/100 Dollars ($10,000,000.00) to be funded by Developer under this Agreement, and/or (y) any costs of completing the NGB Training Facility in excess of the Ten Million and No/100 Dollars ($10,000,000.00) to be funded by Developer under this Agreement, and (ii) up to Three Million Five Hundred Thousand and No/100 Dollars ($3,500,000.00), together with any amounts not advanced under clause (i) above to provide the subsidies or grants or to acquire the property necessary for the City to meet the conditions precedent to the development of Affordable Housing units pursuant to Section 9.4(ii) of this Agreement. The funds shall be advanced by the Developer in installments of not less than One Million and No/100 Dollars ($1,000,000.00) on a monthly basis as required to complete the NGB Training Facility, library renovations and expansion and/or Affordable Housing, as applicable. Developer shall be entitled to a credit and offset against all Additional Rents payable under the Lease equal to any amounts advanced to the City under this Section. Furthermore, in the event this Agreement and/or the Lease is terminated, the City shall repay to the Developer the amounts which have been advanced by Developer under this Section (and not previously repaid through the offset against the Additional Rents or otherwise) within thirty (30) days following the termination of this Agreement or the Lease (if terminated by Developer) and prior to, and a condition to, the termination of this Agreement and/or the Lease (if terminated by the City).

(vii) Developer and the City agree to engage in value engineering and shall design the NGB Training Facility and expanded and renovated library so that the total costs to be funded by Developer under Sections 9.2 and 9.3 of this Agreement do not exceed the amounts provided in such Sections. Notwithstanding the

foregoing, in the event the actual costs exceed the Developer's funding obligation amounts under Sections 9.2 and 9.3, the Developer shall be responsible for funding the cost overruns. In the event the City and/or Developer are able to obtain any grants or subsidies for the construction of the NGB Training Facility and/or the library expansion and renovation, the grants and subsidies shall be applied first to fund cost overruns, with the balance payable to the City.

3. Approvals.

3.1 Development Approvals. Certain provisions of this Agreement may require the City and/or its boards, departments or agencies, acting in their governmental capacity to consider certain changes in the City's Comprehensive Plan and/or Zoning Ordinance as well as to consider taking other governmental actions. The term **"Development Approvals"** as used in this Agreement shall mean all City approvals, consents, permits, amendments, rezonings, conditional uses or variances as well as such other official actions of the federal, state or local governments which are necessary to: (i) be allowed to close through either a phased closure plan or final closure plan and remediate the landfill previously operated upon the Preserve Parcel, and (ii) develop the Project upon the Preserve Parcel as contemplated by this Agreement, which approvals are set forth on **Exhibit "F"**.

The obligations of the parties to obtain the Development Approvals shall be deemed satisfied and fulfilled at such time as the Development Approvals are fully adopted by all requisite federal, state, county or city governmental actions with conditions, if any, reasonably acceptable to the Developer and the City, and the same have become final, binding and no longer subject to appeal, which shall be referred to as having obtained the **"Final Approvals."** In the event any of the Final Approvals include a requirement that the City, as a property owner, provide its joinder or consent to the Developer, the City agrees to promptly provide such joinders and consents.

3.2 Applications for Development Approvals

(i) Promptly following the date of this Agreement, Developer and the City will initiate and diligently pursue the Development Approval applications in

substantial accordance with Exhibit "G" (the Development Approval Schedule).

(ii) The City shall consent to the filing of all applications for the foregoing as necessary because of its ownership of the Preserve Parcel. In the event this Agreement requires modifications of any ordinances, resolutions, rules or regulations of the City or other governmental entity which must (as a matter of law) be initiated by the City, then, any modifications to such ordinances, resolutions, rules and/or regulations will be initiated by the City promptly following the date of this Agreement. Developer agrees to pay all of the application fees and advertising costs required for the processing of these applications. Consistent with its obligations to fully and fairly review all applications, the City will process all Development Approval applications within the control of the City in a timely manner as permitted by law, and the City shall cooperate with the Developer in processing all necessary Development Approvals from federal, county and state agencies.

3.3 Other Development Approvals. In addition to obtaining the Final Approvals, the City, to the extent permitted by law, shall cooperate and assist Developer in the applications for and processing of any and all other development approvals or other approvals with respect to the development of the On-Site Improvements and/or the Off-Site Improvements (including, without limitation, any building permit requested by the Developer) as may be required to allow the construction of the improvements and to the extent that such improvements are consistent with the terms of this Agreement and as long as such cooperation and assistance does not include the exercise of the City's police power or arise out of the exercise of the City's powers when acting in a quasi-judicial capacity. The City will process all such development approval applications in a timely manner as permitted by law; however, the City shall not be obligated to expend any funds in support of any such applications.

3.4 Zoning and Other Approvals. As provided above, the parties recognize and agree that certain provisions of this Agreement may require the City and/or its boards, departments or agencies, acting in their

police power/quasi-judicial capacity, to consider certain changes in the City's Zoning Ordinance or other applicable City codes, plans or regulations, as well as to consider other governmental actions. All such considerations and actions shall be undertaken in accordance with established requirements of state statute, and the City Charter and City ordinances, in the exercise of the City's jurisdiction under the police power. Nothing in this Agreement is intended to limit or restrict the powers and responsibilities of the City in acting on such applications by virtue of the fact that the City may have been required to consent to such applications as a property owner. The parties further recognize and agree that these proceedings shall be conducted openly, fully, freely and fairly in full accordance with law and with both procedural and substantive due process to be accorded the applicant and any member of the public that may be entitled to participate in any proceeding. Nothing contained in this Agreement shall entitle the Developer to compel the City to take any action, except the consents to the filing of such applications for the required approvals and to timely process the applications.

3.5 Regional Activity Center. The minimum number of residential condominium units Developer is required to complete is reflected on the Concept Plan. In no event shall less than 2,800 residential condominium units be constructed on the Preserve Parcel. If regulatory approvals are required for, and obtained, then the total minimum number of residential condominium units to be included in the Project shall be increased to between 4,400 and 4,800 units. The City and Developer agree to use all possible best efforts to create a Regional Activity Center (R.A.C.) which includes the Project. In the event a R.A.C. is not approved and adopted by all governmental agencies exercising jurisdiction over the R.A.C. process within two (2) years following the date of the execution and delivery of the Lease by the City and Developer, the City, as property owner, shall institute all required processes to establish a Development of Regional Impact (D.R.I.) for the Project. Additionally, the City and Developer shall use all possible best efforts to obtain any necessary Preliminary Development Agreement (P.D.A.) to continue development of the Project approved prior to the initiation of the D.R.I. process, and to the extent such P.D.A. has not been approved prior to the initiation of the D.R.I. process, the parties shall continue to pursue approval of the P.D.A. Developer

agrees to use all possible best efforts to co-sponsor and cooperate with the City to establish the D.R.I. in the event the R.A.C. is not approved. Developer agrees to pay all third party costs of obtaining the R.A.C. and D.R.I. approvals, of whatever nature, in regard to the R.A.C. and D.R.I. processes. Developer agrees to construct all residential units and other construction allowed or required by the D.R.I. approval. Developer and the City agree to negotiate a D.R.I. development agreement which contains commercially reasonable terms.

4. Lease. Subject to the satisfaction or waiver of the conditions precedent set forth in Section 8.1 of this Agreement, the City and Developer or Developer's Designee (as defined below) shall enter into a long term ground lease, which shall be substantially in the form attached as **Exhibit "H"** (the **Lease**). The Lease, among other things, provides for the payment of rent in an amount equal to $1,500.00 per completed residential condominium unit and additional rent equal to 4% of the sales price of each first time sale of a condominium unit. In the event of any express conflict between the terms of the Lease and the terms of this Agreement, the Lease terms shall govern.

5. Initial Payments. Developer shall pay to the City the sum of One Million Dollars ($1,000,000.00) (the **Initial Payment**) within thirty (30) days following the date the City has taken all requisite action to approve (i) the Concept Plan and such approval has become final, binding and no longer subject to an appeal, (ii) the transmittal of an amendment to the City's Comprehensive Development Master Plan, including (x) an amendment to the Future Land Use Plan Map allowing the proposed uses as part of the text of the Comprehensive Development Master Plan and to show the Preserve Parcel as a PUD and (y) the creation of a Transportation Concurrency Exception Area pursuant to the requirements of Rule 9J-5.0055(6), Florida Administrative Code, (iii) an Amendment to City's "PU-PUD" (Public Use-Planned Unit Development-Public Use) Ordinance to permit the proposed uses set forth in the Concept Plan and this Agreement and such amendment has become final, binding and no longer subject to an appeal, and (iv) an Amendment to the City's Zoning Ordinance to change the district boundary designation of the portion of the Preserve Parcel presently zoned as "PU" (Public Use) to either "PU-PUD" or "PUD" in order to develop the Project and such amendment has become final, binding and no longer subject to an appeal. In addition, until such time as the Developer has entered into a Lease with the City, Developer shall pay to the City (i) the sum of One Million and No/100 Dollars ($1,000,000.00) in twelve (12) equal monthly installments of $83,333.33 (except that the last installment shall be $83,333.37) commencing on a date which is one (1) year following the date the Initial Payment is due, and (ii) the additional sum of One Million and No/100 Dollars

($1,000,000.00) in twelve (12) equal monthly installments of $83,333.33 (except that the last installment shall be $83,333.37) commencing on a date which is two (2) years following the date the Initial Payment is due (collectively, the **Additional Payments**). Neither the Initial Payment nor the Additional Payments shall be subject to any reimbursement or credit to the Developer of any nature pursuant to this Agreement; provided, however, in the event Miami-Dade County does not approve the Lease to the Developer pursuant to Section 2-11.2 of the Miami-Dade County Code and this Agreement is terminated as a result of such disapproval, the City shall be obligated to repay the Initial Payment and Additional Payments to the Developer pursuant to the following schedule: (i) One Million and No/100 Dollars ($1,000,000.00) shall be due and payable to the Developer within ninety (90) days following the termination of this Agreement, and (ii) the balance shall be repaid to Developer in equal monthly installments of $83,333.33 until repaid in full, commencing one (1) year following the date the initial One Million and No/100 Dollars ($1,000,000.00) payment is due under clause (i) above.

6. Reporting Requirements. In addition to reporting requirements contained in the proposed Lease, Developer shall furnish the following reports and financial statements to the City:

A. Quarterly Reports. Each quarter Developer shall deliver to the City a status report on all construction and commercial activity in respect to the Project and all other development and construction and commercial activity both onsite and offsite which is authorized or required by this Agreement and/or authorized or required by the Lease together with a statement of income and expense. This report shall be provided within 30 days of the end of each quarter.

B. Annual Reports. Within sixty (60) days following the end of each calendar year, Developer shall provide the City with annual compiled financial reports prepared by a certified public accountant duly licensed in the State of Florida and reasonably acceptable to the City which sets forth in detail all income and expense of Developer including net development costs, Gross Condominium Revenues (as defined in the Lease) and Commercial Net Profits (as defined in the Lease) for the immediately preceding year and all other income and expenses relating to all development, construction, and activities authorized or required by this Agreement or the Lease.

C. Audits. Developer shall make all of its books and records related to the activities authorized or required by this Agreement or the Lease including all records and receipts relating to all items of income or expense. Such

records shall be made available to the City at Developer's main accounting office in Florida for examination by the City and its authorized representatives (including independent auditors) at any time upon five (5) business days notice. The City shall have the right to copy such records and maintain them in accordance with Chapter 119, Florida Statutes.

7. Hotel and Town Center.

7.1 Hotel. The Developer shall complete construction of one (1) hotel consisting of not less than one hundred fifty (150) rooms upon the Preserve Parcel prior to the commencement of any phase of the Project other than the first phase as set forth on the Concept Plan. In the event that prevailing market conditions preclude the development of the hotel prior to the completion of the first phase of the Project, the Developer may, but solely with the consent of the City, delay the completion of the hotel. The Developer agrees that the hotel shall be (i) built to at least the standards of a Marriott or one of the other flagships listed in clause (ii) below and shall otherwise be a three (3) star hotel according to the Mobil rating system, (ii) operate under one of the following flagships or such other flagship as may be approved by the City: Marriott, Hilton, Starwood, Hyatt, Crowne Plaza, Wyndham or Doubletree, and (iii) operated by the Developer (or an affiliate) or a hotel operator with at least five (5) years of experience operating hotels of this quality and otherwise reasonably acceptable to the City. The Developer agrees that in connection with the construction and operation of the hotel (i) it will use all commercially reasonable efforts to insure affirmative action in the recruitment and recruitment advertising to attract and retain qualified minority [illegible] contractors and subcontractors, (ii) it will provide a reasonable opportunity in the recruitment, recruitment advertising and hiring of qualified contractors and subcontractors whose residence or primary place of business is in the City of North Miami, (iii) it will use all commercially reasonable efforts to insure affirmative action to retain qualified employees regardless of race, color, place of birth, religion, national origin, sex, age, marital status, veteran, sexual orientation and disability status, (iv) it will provide a reasonable opportunity in the recruitment, advertising and hiring of qualified employees residing in the City of North Miami, and (v) there will be at least fifteen percent (15%) of minority ownership in the hotel. Developer acknowledges and agrees that

prior to the development of the hotel upon the Preserve Parcel, the Developer shall enter into a hotel development agreement with the hotel developer and is subject to the approval of the City.

7.2 Town Center. The Developer agrees to include a Town Center in the development of the Project as reflected in the Concept Plan no sooner than completion of phases prior to the phase including the Town Center and before commencing any later phases unless otherwise approved by the City. The town center (**Town Center**) shall consist of at least twenty thousand (20,000) square feet and not more than one hundred thousand (100,000) square feet of retail and/or office space (which may, without limitation and without obligation, include a coffee shop, deli, convenience store, gourmet market, health club facilities and other similar neighborhood retail uses, all subject to the approval of the City) which shall be open to the general public. The Developer shall use commercially reasonable efforts to include an additional hotel within the Town Center component of the Project. Developer agrees that (i) in connection with the construction of the Town Center, it will provide a reasonable opportunity in the recruitment, recruitment advertising and hiring of qualified contractors and subcontractors whose residence or primary place of business is in the City of North Miami, and (ii) in connection with the leasing of the Town Center, it will (x) provide a reasonable opportunity to residents in the City of North Miami to lease space in the Town Center, (y) obligate its tenants under their respective leases to use all commercially reasonable efforts to insure affirmative action to retain qualified employees regardless of race, color, place of birth, religion, national origin, sex, age, marital status, veteran, sexual orientation, and disability status, and (z) obligate its tenants under their respective leases to provide a reasonable opportunity in the recruitment, advertising and hiring of qualified employees residing in the City of North Miami. Furthermore, the Developer agrees that in connection with the construction and operation of the additional hotel within the Town Center, if developed, (i) it will use all commercially reasonable efforts to insure affirmative action in the recruitment and recruitment advertising to attract and retain qualified minority and female contractors and subcontractors, (ii) it will provide a reasonable opportunity in the recruitment, recruitment advertising and hiring of qualified contractors and subcontractors whose residence or primary place of

business is in the City of North Miami, (iii) it will use all commercially reasonable efforts to insure affirmative action to retain qualified employees regardless of race, color, place of birth, religion, national origin, sex, age, marital status, veteran, sexual orientation and disability status, and (iv) it will provide a reasonable opportunity in the recruitment, advertising and hiring of qualified employees residing in the City of North Miami.

8. Conditions Precedent.

8.1 Conditions Precedent to the issuance of the Lease.

(i) Developer shall have obtained the Final Approvals, including the building permits necessary for commencement of construction of the first building within the first phase of the Project.

(ii) Developer shall have obtained a leasehold title insurance policy with respect to the Project in accordance with Section 8.5 below.

(iii) Developer shall not be in default of any material terms, conditions or obligations under this Agreement.

(iv) Developer shall have provided the City with evidence reasonably satisfactory to the City that the Developer has sufficient funds available (which may include, without limitation, loans, grants, subsidies and/or contributed equity) to (i) fund Ten Million and No/100 Dollars ($10,000,000.00) for the construction of the NGB Training Facility as provided in Section [illegible] (ii) complete the environmental remediation and landfill closure of the entire Preserve Parcel in accordance with Section 12 of this Agreement, and (iii) fund the costs of the infrastructure improvements required to develop the first phase of the Project. In addition, the Developer shall have provided the City with completion guaranties in amounts and form reasonably satisfactory to the City, taking into account all grants and other funds specifically set aside for the benefit of the City, to assure the completion of the matters set forth in clauses (i) and (ii) above. The completion guaranties shall remain in effect until completion of the matters set forth in

clauses (i) and (ii) above without regard to the term of this Agreement or the Lease and shall survive the termination of this Agreement or the Lease.

8.2 Failure to Satisfy the Conditions Precedent. Subject to the provisions of this Agreement as required by applicable laws, the parties to this Agreement shall use their respective good faith and diligent efforts to obtain the Final Approvals and otherwise timely satisfy and comply with each and every one of the foregoing conditions precedent. It is recognized by the parties that it is not the intention of any party to encumber the Preserve Parcel with this Agreement for an indefinite period of time during the period of satisfaction of the conditions precedent. Accordingly, the parties shall have a period of twenty four (24) months following the date of this Agreement to satisfy all of the conditions precedent set forth in Section 8.1 of this Agreement, (such time period is sometimes referred to as an **Approval Period**). The parties shall have the right to, but not the obligation to, agree to extend the Approval Period for an additional twelve (12) months. In the event the Final Approvals and conditions precedent have not been satisfied on or before the expiration of the Approval Period (as the same may be extended as provided above), or in the event that prior to the expiration of the Approval Period any of the required Development Approvals have been previously denied by the City (or, with respect to any Development Approval which is denied by a governmental entity other than the City, not refiled or appealed within thirty (30) days after such denial, to the extent such refiling or appeal is permitted by law), then, this Agreement shall terminate, unless the parties (i) further extend the Approval Period, or (ii) waive the condition precedent, and upon such termination, the parties shall be released from all further obligations under this Agreement except only those specifically stated to survive.

8.3 Expenses. Except where otherwise specifically provided in this Agreement, all expenses in connection with satisfying the foregoing conditions precedent shall be borne by Developer, including, without limitation, third party professional fees and expenses of the City's professional consultants not to exceed One Hundred Twenty Five Thousand and No/100 Dollars ($125,000.00) in total (the **Professional Fee Cap**), which shall be paid upon the execution of this Agreement and attachment of Exhibits "H" and "M". The City shall be solely responsible for its own

professional consultants including, without limitation, architects, contractors, accountants and attorneys in connection with reviewing any applications, plans and/or materials prepared and submitted by Developer and Developer's professionals, and for costs and expenses which exceed the Professional Fee Cap.

8.4 Title. Prior to the execution of this Agreement, Developer has obtained a commitment (the **Title Commitment**) from Chicago Title Insurance Company to issue a leasehold ALTA Form B Marketability title insurance policy to Developer effective as of the date of the execution and delivery of the Lease, a copy of which is attached hereto as **Exhibit "I"**. Developer shall have a period of thirty (30) days following the date of this Agreement to make written objection (the **Objection Notice**) to any matter set forth in the Title Commitment and/or any survey of the Preserve Parcel obtained by Developer which renders title unmarketable or adversely affects the development of the Project upon the Preserve Parcel. The City and Developer shall have a period of thirty (30) days following the City's receipt of the Objection Notice to mutually agree upon the steps to be taken to satisfy Developer's objections; provided, however, that the City shall not be required to initiate or participate in any judicial or administrative actions, nor expend any sums to satisfy Developer's objections. In the event the Developer and City are not able to mutually agree upon the steps to be taken to resolve Developer's objections or the parties agree upon such steps but are unable to satisfy the objections, the Developer shall have the right to terminate this Agreement by providing written notice to the City within ten (10) days following the expiration of the thirty (30) day period, in which event the parties shall be released from all further obligations under this Agreement except only those specifically stated to survive. The City shall take all actions required by Schedule B-1 of the Title Commitment (including without limitation, the delivery of an appropriate mechanic's lien, exclusive possession and gap affidavit) prior to the execution and delivery of the Lease to convey the quality of title to the leasehold interest required by this Agreement, provided, however, that the City shall not be required to initiate or participate in any judicial or administrative actions, nor expend any sums (other than nominal recording fees and legal fees to prepare the requisite leasehold conveyance and authority

documents) to satisfy the requirements set forth in Schedule B-1 of the Title Commitment. At the time of execution of the Lease, the City shall deliver to Developer (or its designee), as applicable, a good, marketable and insurable leasehold interest in and to the Preserve Parcel, free and clear of all liens, encumbrances, rights of occupancy or other matters except only the following:

(i) ad valorem real estate taxes for the year of closing and subsequent years, which are not yet due and payable;

(ii) applicable zoning ordinances and regulations in accordance with this Agreement; and

(iii) those certain matters as shown in Schedule B-2 to the Title Commitment which are not objected to in the Objection Notice, together with those matters which are included in the Objection Notice to the extent that the same are not satisfied and the Developer does not elect to terminate this Agreement as provided above.

Prior to the execution of the Lease, no part of the Preserve Parcel shall be alienated, encumbered, conveyed or otherwise transferred and the City shall not permit any action to be taken which would result in any defect in the title otherwise required. Developer may update the title and obtain any surveys or updated surveys it desires prior to the date when the Lease is required to be executed and delivered, and the City shall take all actions necessary to cure any defect first arising after the effective date of the Title Commitment unless such defect is caused by Developer. The leasehold owner's title insurance policy shall be issued by Chicago Title Insurance Company at minimum promulgated rates; provided, however, that fifty percent (50%) of the title agent's premium retention (not to exceed the Professional Fee Cap) shall be remitted by the title agent to the Developer. The City shall be entitled to select the agent of Chicago Title Insurance Company to issue the title policy. Developer shall be responsible for paying for the title insurance policy premium.

9. Off-Site Improvements

9.1 Charter High School. Developer's obligation to construct the Charter School upon the Charter School

Site shall be conditioned upon the following: (i) the execution and delivery of the Lease by the City and Developer; (ii) the City shall have made the Charter School Site available to the Developer pursuant to a thirty (30) year ground lease substantially similar to the form of Lease conveying good, marketable and insurable title to the leasehold interest, provided that the rent shall be One Dollar ($1.00) per year; (iii) the Developer shall have obtained all land use zoning approvals and other governmental approvals, with any conditions of the approvals being reasonably acceptable to Developer and City, including, without limitation, approval from the Miami-Dade County School Board, if required, necessary to construct and operate the Charter School; and (iv) the City shall have selected and approved the charter school operator. The design, size and use of the Charter School shall be mutually agreed to by the City and Developer. In the event the foregoing conditions precedent are satisfied within five (5) years following the execution and delivery of the Lease, Developer shall complete or cause the completion of the construction of the Charter School within two (2) years following the satisfaction of the conditions precedent set forth above. To the extent Developer does not develop the Charter School and elects to retain a third party developer, the City shall have the right to approve the third party developer and the development agreement with such developer. Developer agrees that Developer shall retain or partner with a charter school operator approved by the City to operate the Charter School, and the operating agreement shall be subject to the City's approval. The Developer and the City acknowledge and agree that any Charter School Profits (as defined below) which the City and/or Developer receive in connection with the development and/or operation of the Charter School shall be shared equally between Developer and the City. For purposes of this paragraph, **"Charter School Profits"** shall mean any revenues generated in connection with the development and/or operation of the Charter School which are received by (i) the Developer in excess of the rent payable to the City under the ground lease for the Charter School Site and any other bona-fide third party costs incurred by the Developer to develop and/or operate the Charter School, and/or (ii) the City in excess of any bona-fide third party costs incurred by the City to develop and/or operate the Charter School.

9.2 National Governing Body for Olympic Sports Training Facility. Developer's obligation to develop the NGB Training Facility upon the NGB Training Site shall be conditioned upon the following: (i) the execution and delivery of the Lease by the City and Developer, (ii) the City shall have made the NGB Training Site available to the Developer for construction of the NGB Training Facility, (iii) City shall have entered into a forty (40) year ground lease with the NGB's (as defined below) conveying good, marketable and insurable title to the leasehold interest, provided that the rent shall be One and No/100 Dollars ($1.00) per year, (iv) the Developer shall have obtained all land use and zoning approvals and other governmental approvals necessary to construct and operate the NGB Training Facility in non-appealable form, with any conditions of the approvals being reasonably acceptable to Developer, and (v) Developer's bonafide costs payable to unaffiliated third parties and direct project personnel to complete the development of the NGB Training Facility (including any endowments payable to the NGB's as set forth in the letters of intent delivered to the City and any other endowment funds which are committed following the date of this Agreement with the consent of the City) shall not exceed a total of Ten Million and No/100 Dollars ($10,000,000.00), subject to the cost overrun provisions of Section 2.2(vii) of this Agreement. The City shall have the right to approve the size, design, budget and operating hours of the NGB Training Facility. In the event that the foregoing conditions precedent are satisfied, the Developer shall develop the NGB Training Facility unless the Developer is unable to obtain the commitment from at least three (3) national governing bodies for the combative sports (the "NGB's") to relocate to such facility within twelve (12) months following satisfaction of the conditions precedent. In the event the Developer is unable to obtain the commitment of the NGB's as provided above, the Developer shall fund Ten Million and No/100 Dollars ($10,000,000.00) to construct an active recreational facility approved by the City upon the NGB Training Site or provide the subsidies or grants or to acquire the property necessary for the City to meet the conditions precedent to the development of Affordable Housing units pursuant to Section 9.4(ii) of this Agreement as determined by the City, such payment to be funded in installments as the construction of the improvements progresses. The Developer shall not utilize the NGB Training Facility as a source of revenue or profit. In the event the conditions

precedent to the construction of the NGB Training Facility are not satisfied within five (5) years following the execution and delivery of the Lease, the Developer shall fund Ten Million and No/100 Dollars ($10,000,000.00) to provide the subsidies or grants or to acquire the property necessary for the City to meet the conditions precedent to the development of Affordable Housing units pursuant to Section 9.4(ii) of this Agreement, such payment to be funded in installments as construction of such improvements progresses. To the extent the third party bonafide costs of the NGB Training Facility are less than Ten Million and No/100 Dollars ($10,000,000.00), the Developer shall make the balance of such funds available to the City to provide the subsidies or grants or to acquire the property necessary for the City to meet the conditions precedent to the development of Affordable Housing units pursuant to Section 9.4(ii) of this Agreement, such payment to be funded in installments as construction of such improvements progresses.

9.3 Library Renovation and Expansion. Developer's obligation to renovate and expand the existing City library shall be conditioned upon the following: (i) the execution and delivery of the Lease by Developer and the City and (ii) the City obtaining all land use and zoning approvals and other governmental approvals necessary to renovate and expand the existing library in non-appealable form, without any conditions imposing any additional costs upon Developer. The City shall have the sole right to approve the size, budget and design (including the architect) of the renovation and expansion of the existing City library and the library shall remain solely owned and operated by the City. In the event that the foregoing conditions precedent are satisfied within ten (10) years following the execution and delivery of the Lease but not earlier than five (5) years following the execution and delivery of the Lease, to the extent that grants and subsidies are not available to the City to construct the same, Developer, at Developer's sole cost and expense, not to exceed Ten Million and No/100 Dollars ($10,000,000) in the aggregate, subject to the cost overrun provisions of Section 2.2(vii) of this Agreement, for bonafide costs payable to unaffiliated third parties and direct project personnel (excluding any grants or other funds provided by the City or third parties), shall complete the renovation and expansion of the existing City library. To secure the Developer's funding obligations under this

Section 9.3, Developer agrees to provide to the City on or before a date which is five (5) years following the execution and delivery of the Lease by the City and Developer personal guarantees reasonably acceptable to the City totaling $10,000,000. The obligations under such guarantees shall terminate upon the earlier to occur of (i) the funding of the Developer's obligations under this Section 9.3 or (ii) the termination of this Agreement and/or the Lease. To the extent said $10,000,000.00 is not used or fully used as provided in the preceding sentence, the remaining funds shall be used to provide the subsidies or grants or to acquire the property necessary for the City to meet the conditions precedent to the development of Affordable Housing units pursuant to Section 9.4(ii) of this Agreement and shall be funded by Developer in installments as construction of such improvements progresses.

9.4 Affordable Housing. Provided that the conditions precedent set forth below are satisfied, Developer agrees to develop at least the same number of Affordable Housing Units within the City as residential units developed upon the Preserve Parcel by Developer.

(i) Establishment of Housing Enterprise. Developer agrees to establish an enterprise which is to be forty nine percent (49%) minority owned with at least thirty percent (30%) of the forty nine percent (49%) of the minority owners of the enterprise to be minority residents of the City (the **Housing Enterprise**) for the purpose of (i) developing new rental and "for sale" Affordable Housing Units within the City, (ii) completing the renovation and rehabilitation of existing residential units and converting the same into Affordable Housing Units, (iii) providing management services with respect to Affordable Housing Units constructed within the City, (iv) providing management services with respect to the residential units constructed upon the Preserve Parcel, and (v) assisting any City Community Redevelopment Agency (CRA) in the creation and implementation of subsidy programs for the renovation of existing residential units and single family homes within the City. The Developer shall (i) act as an advisor to the Housing Enterprise and shall have representation on its board of directors,

(ii) provide all necessary administrative and overhead support to the Housing Enterprise, and (iii) provide the initial capital reasonably required by the Housing Enterprise to establish its operations. The CRA, to the extent formed and to the extent permitted by law, shall utilize the Housing Enterprise to develop and manage all of the Affordable Housing Units within the boundaries of the CRA, and the Housing Enterprise shall develop and manage all of the Affordable Housing Units within the City but outside of the boundaries of the CRA to the extent requested by the City, all in accordance with the terms of this Section 9.4. The Developer's obligations to provide Affordable Housing under this Section 9.4 shall survive the termination of this Agreement for a period of fifteen (15) years.

(ii) Conditions Precedent. The City agrees that the following shall be conditions precedent to Developer's obligations to develop Affordable Housing Units (on an Affordable Housing project by Affordable Housing project basis) within the City: (1) the City shall be responsible for making the land and/or existing residential units available to the Housing Enterprise with appropriate zoning to permit the development, and/or rehabilitation and conversion of, Affordable Housing Units, and (2) tax credit programs, subsidies, grants and/or other similar governmental programs or CRA programs are made available to the Housing Enterprise in amounts sufficient for the Housing Enterprise to receive a developer's fee equal to fifteen percent (15%) of the costs to complete the Affordable Housing Units (or such lower amount to the extent required by the applicable requirements of the agency (other than requirements adopted in the discretion of the City and/or CRA) providing the grant, provided such fee is sufficient to pay the Developer's reasonable overhead costs for the applicable project), with all project costs being funded through the subsidies and available mortgage financing (taking into account the rental rates and/or sales prices established by the City as provided below). The Developer, through the Housing Enterprise, shall use its good faith and

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diligent efforts to attempt to obtain such subsidies from third party sources other than the City. The City and/or CRA shall be entitled to establish the rental rates and/or sales prices for the Affordable Housing Units.

(iii) Letter of Credit. To secure the Developer's obligations under this Section 9.4, within sixty (60) days following the execution and delivery of the Lease by the City and Developer, Developer shall deliver to the City a letter of credit (the **Letter of Credit**) in the amount of Two Million Dollars ($2,000,000) issued by a financial institution, and in form and substance, reasonably acceptable to the City. In the event that the Developer fails to comply with its obligations under this Section to develop Affordable Housing Units (on a project by project basis) upon the satisfaction of the conditions precedent by the City and such failure continues for a period of ninety (90) days following Developer's receipt of written notice from the City, the City shall be entitled to draw upon the Letter of Credit in the full amount as its sole and exclusive remedy as to the applicable project (on a project by project basis). In such event, the Developer shall be required to deliver to the City a new Letter of Credit in the amount of Two Million Dollars ($2,000,000) within thirty (30) days following the date the City has drawn upon the initial Letter of Credit. The City agrees that any proceeds it receives under a Letter of Credit (or any replacement thereof) shall be used by the City exclusively for the development of Affordable Housing. At the time the Developer delivers the initial Letter of Credit to the City, the Developer shall provide personal guaranties reasonably acceptable to the City guarantying the obligation of Developer to replace the initial Letter of Credit as provided in the preceding sentence, for so long as this Agreement and the Lease remain in full force and effect. In the event Developer fails to replace the Letter of Credit as required under this paragraph, the City's sole and exclusive remedy under this Agreement and the Lease shall be to seek specific performance against the Developer (its successors and/or

assigns) and/or guarantors under the personal guaranties and the City shall not have the right to terminate this Agreement or the Lease as a result of such failure. At such time as the Developer, through the Housing Enterprise or otherwise, has delivered an equal number of Affordable Housing Units as the number of residential units actually developed upon the Preserve Parcel when the entire Project is complete, the City shall release the Letter of Credit to the Developer and the personal guaranties shall be terminated and returned to the Developer.

(iv) Affordable Housing Units. For purposes of this paragraph, "Affordable Housing Units" shall mean (i) residential rental units constructed (or rehabilitated and renovated) upon land provided by the City and/or the CRA with the rental rates established by the City and/or CRA, (ii) residential "for sale" units constructed (or rehabilitated and renovated) on land provided by the City and/or the CRA with the sales price established by the City and/or CRA, and (iii) existing residential units and/or single family homes located in the City which are rehabilitated and renovated through grants, subsidies and other programs funded by the City, CRA and/or other governmental entities and/or housing authorities.

(v) Establishment of City Housing and Improvement Fund. In the event a CRA is not formed or approved by all governmental agencies exercising jurisdiction regarding the CRA within five (5) years following the execution and delivery of the Lease by the City and Developer, until such time as the Developer, through the Housing Enterprise or otherwise, has delivered an equal number of Affordable Housing Units as the number of residential units actually developed upon the Preserve Parcel when the entire Project is complete as required by the City, the City shall utilize Non-Ad Valorem Funds (as hereinafter defined) to fund an amount equal to ninety percent (90%) of all ad valorem tax revenues received by the City for any improvements constructed on the Preserve Parcel in an irrevocable trust utilized solely to (i) satisfy the conditions precedent to the development of

Affordable Housing Units by the Developer as set forth in this Section 9.4 as if the CRA had been established, or (ii) fund other community improvements as determined by the City.

10. Insurance.

10.1 Developer's Insurance. Developer shall obtain and at all times prior to the execution of the Lease, maintain or cause to be obtained and maintained the following insurance with respect to the Preserve Parcel, and as otherwise required in this Article 10:

(i) Comprehensive general and public liability insurance including contractual liability, shall be obtained providing liability insurance against claims for personal injury, death or property damage, occurring on or about the Preserve Parcel, for at least a combined single limit for bodily injury, death and property damage liability of twenty million dollars ($20,000,000.00) per occurrence.

(ii) If required by the City, an indemnity liability insurance policy with limits reasonably acceptable to the City insuring the City against any third party claims made against the City arising from the Developer's closure of the landfill and remediation of the Preserve Parcel, provided such insurance policy is available for a one-time premium not to exceed $200,000.00.

(iii) Comprehensive automobile liability insurance for all owned, non-owned and hired automobiles and other vehicles used by Developer in the performance of any work on the Preserve Parcel for at least a combined single limit for bodily injury, death and property damage of ten million dollars ($10,000,000.00) per occurrence.

(iv) Worker's compensation insurance for statutory obligations imposed by worker's compensation or occupational disease laws.

(v) With respect to any vertical construction on the Preserve Parcel, builder's risk insurance in an amount not less than the replacement

cost for the construction of the vertical improvements. Coverage shall be "All Risk" coverage for one hundred percent (100%) of the completed value with a deductible reasonably acceptable to the City.

(vi) Any other insurance required by applicable law.

With respect to items (i) and (v) coverage can be provided by a combination of Commercial General Liability and Excess Liability policies.

10.2 Responsible Companies. All insurance provided for in this Article 10 shall be effected under valid and enforceable policies issued by highly rated insurers of recognized responsibility which are licensed or permitted to do business in the State of Florida. All such companies must be rated at least "A-" as to management, and at least "Class VIII" as to financial strength on the latest edition of Best's Insurance Guide.

10.3 Named Insureds; Notice to City of Cancellation. All policies of insurance required by this Article 10 and all insurance policies of general contractors, subcontractors, condominium associations and others involved in the Project, to the extent such policies name Developer as a named or additional insured, shall indicate as named or additional insured Developer and the City, with the City receiving any necessary insurance certificates that meet the requirements of this Section 10. All insurance policies shall provide that no cancellation or termination shall be effective until at least thirty (30) days after written notice to the additional and named insureds.

10.4 Waiver of Subrogation Rights. Anything in this Agreement to the contrary notwithstanding, the City and Developer waive any and all rights of recovery, claim, action, or cause of actions against the other, its agents, officers, directors, partners, investors, or employees, for any liability, loss or damage that may occur in, on, about or to the Preserve Parcel and/or the improvements from time to time existing on the Preserve Parcel, or to any portion or portions thereon, or to any personal property brought thereon by reason of fires, the elements or any other cause(s) which are insured against under the terms of valid and collectible insurance policies carried for the benefit of the party entitled to make such claim,

regardless of cause or origin, including the negligence of the other party, its agents, officers, directors, partners, investors, or employees; provided that such waiver does not limit in any way any party's right to recovery under such insurance policies, and provided further that the insurer pays such claims. Developer shall obtain an endorsement to all of its insurance policies relating to or covering the Property, or any portions of the Property to effect the provisions of this Article 10.

10.5 General Contractor. Any general contractor constructing the Project shall provide the City with evidence of insurance reasonably acceptable to the City.

10.6 Miscellaneous. City shall not be responsible for purchasing and maintaining any insurance to protect the interests of Developer, subcontractors or others constructing the Project. City specifically reserves all statutory and common law rights and immunities. Nothing contained in this Agreement is intended to limit or waive any rights or immunities, including, but not limited to, the procedural and substantive provisions of Section 768.28, Florida Statutes.

11. Community Redevelopment Agency. The City agrees to use all possible best efforts prior to the expiration of the Approval Period, to secure for a period of at least thirty (30) years a delegation of the exercise of powers under the Community Redevelopment Act of 1969, Chapter 163, Part III, Florida Statutes, as amended (the CRA Act), from Miami-Dade County with respect to the areas of the City (including the Preserve Parcel) in need of community rehabilitation and development (a CRA), as determined by the City; and to formulate a community redevelopment plan for such CRA that includes a provision of affordable housing. The City agrees that the Developer shall have the right to attend and participate in all meetings with Miami-Dade County and public hearings with respect to the creation of the CRA, and the City agrees to give reasonable prior written notice to Developer of the date, time and location of each such meeting and public hearing. The City shall also promptly provide the Developer with copies of all correspondence between the City and Miami-Dade County, Florida with respect to the creation of the CRA. The Developer (through the Housing Enterprise) agrees, upon request of the City, to assist the City in developing affordable housing programs within a CRA to be funded with tax increment revenues available to the City in accordance with the CRA Act and the delegation of authority from Miami-Dade County, Florida. The Developer agrees to advance to the City at the same time that the Developer funds the Initial Payment the sum of One Hundred Thousand Dollars ($100,000.00) to be used by the City to pay third party costs and expenses incurred

with respect to the formation of the CRA. Upon formation, the CRA shall have the obligation to promptly reimburse the Developer the $100,000.00 to the extent permitted by law; however, to the extent the CRA is not formed or is not permitted to, or otherwise fails to make such reimbursement prior to a date which is five (5) years following the execution of the Lease, the $100,000.00 shall be credited against the Developer's obligation to make the payments set forth in Section 9.3 of this Agreement.

12. Environmental Remediation.

12.1 Environmental Conditions. The City and Developer both recognize that the Preserve Parcel has been and shall continue to be in need of Corrective or Remedial Action (as hereinafter defined) as a result of past landfill activities that have taken place on the Preserve Parcel and the Administrative Orders (as hereinafter defined) and Environmental Laws (as hereinafter defined) which have and will govern the use of the Preserve Parcel. Based upon the foregoing, the City and Developer acknowledge and agree that the Preserve Parcel will be required to be remediated and the landfill closed in compliance with the Administrative Orders and Environmental Laws, and the parties agree to cooperate and work together to complete such remediation, subject to the terms and provisions of this Section 12.

12.2 Definitions. For purposes of this Section 12, the following terms shall have the meanings set forth below.

(i) "**Administrative Orders**" means those certain administrative and judicial orders and agreements regarding the environmental condition of the Preserve Parcel and listed on Exhibit "J" attached hereto.

(ii) "**Corrective or Remedial Action**" means investigation, monitoring (including post-closure monitoring), active remediation, passive remediation and risk assessment, landfill closure or other response required under Environmental Laws or any combination thereof in such a manner as to achieve the applicable regulatory standards required by Environmental Laws or the rules, regulations or policies of any governmental agency with jurisdiction.

(iii) "**Environmental Law**" means, individually or collectively, the Comprehensive Environmental

Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601, et. seq. (CERCLA); the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et. seq. (RCRA); the Toxic Substances Control Act, 15 U.S.C. Section 2601 et. seq. (TSCA); the Hazardous Materials Transportation Act, 49 U.S.C. 1801 et. seq.; the Federal Water Pollution Prevention and Control Act, 33 U.S.C. Section 1251 et. seq.; and the Oil Pollution Act of 1990, Pub. L. 101-380, August 18, 1990, and comparable state and local laws, including but not limited to the Florida Air and Water Pollution Control Act, Chapter 403, Florida Statutes, as said laws may be supplemented or amended from time to time, the regulations now or hereafter promulgated pursuant to said laws and any other federal, state, county or local law, statute, rule, regulation or ordinance currently in effect or subsequently enacted, promulgated or adopted that relates to the use, storage, disposal, presence, cleanup, transportation or release or threatened release into the environment of Hazardous Waste, landfill closure, and any and all Administrative Orders.

(iv) "**Excluded Liabilities**" shall mean (i) any liabilities and obligations arising from or related to Administrative Orders at the Preserve Parcel known by City and not disclosed to Developer by City prior to the date of this Agreement; (ii) any liabilities and obligations for Corrective or Remedial Action with respect to Hazardous Waste or Hazardous Material generated by City, its agents, employees or tenants (excluding Developer and its agents, employees and contractors) at the Preserve Parcel and disposed of off-site, including, without limitation, at landfills or other recycling or disposal facilities, from and after the date of this Agreement; (iii) fines and penalties assessed against City as a result of City's acts or omissions (but excluding obligations assumed by the Developer under this Section 12); and (iv) liabilities for personal injury (including death and disability) caused by the acts or omissions of City.

(v) "Hazardous Material" means and includes any substance that is or contains (a) any "Hazardous Substance" as now defined in Section 101(14) of CERCLA or any regulations promulgated under CERCLA; (b) any "hazardous waste" as now or hereafter defined in RCRA or any regulations promulgated under RCRA; (c) any substance now or hereafter regulated under TSCA or OSHA or any regulations promulgated under TSCA or OSHA; (d) petroleum, petroleum byproducts, gasoline, diesel fuel, or other petroleum hydrocarbons; (e) ACM, in any form, whether friable or non-friable; (f) polychlorinated biphenyls ("PCBs"); (g) lead and lead containing materials; or (h) any additional substance, material or waste (A) the presence of which on or about the Preserve Parcel (i) requires reporting, investigation or remediation under any Environmental Laws, (ii) causes or threatens to cause a nuisance on the Preserve Parcel or any adjacent property or poses or threatens to pose a hazard to the health or safety of persons on the Preserve Parcel or any adjacent property, or (iii) which, if emanated or migrated from the Preserve Parcel, would constitute a trespass, or (B) which is determined by any governmental agency with jurisdiction thereof to pose a present or potential hazard to human health or the environment.

(vi) "Hazardous Waste" means any hazardous substance, pollutant or contaminants, petroleum products, asbestos containing materials, toxic substance, hazardous waste, hazardous material or similar term as defined or used in any Environmental Law applicable to the Preserve Parcel, as said laws have been supplemented or amended to date and the regulations promulgated pursuant to said laws.

(vii) "New Contaminants" means Hazardous Material Released into the Environment in, on, under or about the Preserve Parcel after the date of this Agreement as a result of the use or conduct of activities on the Preserve Parcel by Developer, its, licensees, contractors, subcontractors, materialmen, suppliers, delivery services or invitees, but not including any release, leaching or migration of Hazardous Materials that arise out of activities of the City or others prior to the date of this Agreement.

(viii) "Release" means any past or present, intentional or unintentional, actual or threatened, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of any Hazardous Material (including the abandonment or discarding of barrels, containers, and other closed receptacles containing or having contained any Hazardous Material). Notwithstanding the foregoing, the term "Release" shall not include any permitted releases. A "permitted release" is a release, the nature and manner of which is authorized in a permit issued to Developer, or its successors or assigns, by a governmental agency with jurisdiction over the Preserve Parcel or which generally is authorized pursuant to Environmental Law.

(ix) "Remedial Action" means any investigation, containment, removal, remedy, clean-up, capping, response, abatement, landfill closure, or any other response action for any existing environmental condition or New Contaminants, as applicable, including any negotiations, discussions and other communications with governmental authorities with jurisdiction over the Preserve Parcel with respect to any ongoing or potential or threatened investigation, containment, removal, remedy, clean-up, response or abatement of any environmental condition or New Contaminants, as applicable, including, but not limited to any and all actions necessary to obtain and comply with a conditional or final certificate of completion.

12.3 Remediation Activities. Following the date of this Agreement, Developer shall assume City's responsibilities to comply with the Environmental Laws with respect to the Preserve Parcel. Developer, at its sole cost and expense, may pursue approval of alternative Remedial Actions with respect to the Preserve Parcel. The City agrees to cooperate with the Developer in connection with Developer's efforts to obtain approval of alternative Remedial Actions, including without limitation, (i) using its good faith and diligent efforts to seek extensions of time periods for compliance with, or other modifications to, the Administrative Orders, provided such Remedial Actions do not impose more liability upon the City than set forth in the Administrative Orders, and (ii) granting to Developer such licenses, consents and/or approvals as may reasonably be required by Developer upon portions of the Preserve Parcel for the purpose of completing environmental remediation. From and after the date of this Agreement, Developer shall, subject to the limitation set forth herein, assume responsibility to comply with Environmental Laws with respect to the Preserve Parcel, at Developer's sole cost and expense. Developer shall submit its plan for establishing the baseline environmental condition of the Preserve Parcel to the City within thirty (30) days following the execution and delivery of this Agreement by the City and Developer. The City shall have the right to approve, reject or approve with modifications, the Developer's plan for establishing the baseline condition, the sampling methods and the results of analyses in the City's reasonable discretion, provided that the City promptly provides Developer with its response in writing (including any specific reasons for rejection and proposed modifications). Developer shall establish the [illegible] environmental condition of the Preserve Parcel within the time frame set forth in the approved plan for establishing the baseline by utilizing existing monitoring wells along the perimeter of the Preserve Parcel to the east and the south, and by installing and sampling any additional wells it deems necessary to complete such baseline. In the event that the quality or quantity of contaminants in the groundwater materially increases (on a sustained basis continuing for a period of ninety (90) days unless otherwise extended by the mutual agreement of the parties) after the baseline condition is established and the Developer has begun construction under any building permit, it shall be conclusively presumed that such increase in groundwater contamination is a New Contaminant.

12.4 Meetings and Correspondence with Governmental Agencies. Following the date of this Agreement, Developer shall have the right to contact any governmental agencies with jurisdiction of the Preserve Parcel to the extent it deems appropriate regarding Developer's proposed remediation activities and development plans. Developer and the City agree to provide the other party with not less than forty-eight (48) hours' written notice prior to meeting with such governmental agencies, and, subject to the scheduling arranged by such party and the agency, the other party shall have the right to be present at all meetings with such agencies. From and after the date of this Agreement, (i) each party shall promptly provide copies of all correspondence submitted to governmental agencies with respect to any Corrective or Remedial Action, and (ii) each party shall promptly deliver to the other party all notices, correspondence and other communication, in whatever written or electronic format, received from such agency with respect to the environmental condition of the Preserve Parcel. From and after the date the Final Approvals are obtained, the City shall refrain from engaging in any communications or discussions with any governmental agency with jurisdiction over the Preserve Parcel and from taking any other action which could result in any such agency requesting or requiring Developer to take, perform or cease any Corrective or Remedial Action. Notwithstanding the foregoing, in the event the City receives a notice, correspondence or communication from any agency and the City is obligated to respond thereto by Environmental Laws, then in addition to promptly delivering a copy of such notice to Developer, City shall coordinate and cooperate with Developer in responding to the same.

12.5 Remediation of Property. From and after the date the date of this Agreement, Developer shall assume, undertake, satisfy, discharge and perform, in the manner required by applicable Environmental Laws, all environmental obligations whether existing or first occurring before, on, or after the date of this Agreement except only for the Excluded Liabilities. Without limiting the generality of the foregoing, the following rights, covenants and obligations shall govern the parties:

(i) Corrective Action. From and after the date of this Agreement, Developer shall perform all Corrective Action at the Developer's

expense with respect to all Hazardous Materials or Hazardous Waste and closure of the landfill present at the Preserve Parcel except only the Excluded Liabilities; provided, however, that Developer shall be entitled to delay the completion of such Corrective Action while it is proceeding in good faith to seek modifications to the Environmental Laws and the Corrective Action as permitted under clause (ii) below so long as Developer pays any and all penalties imposed upon the City as a result of the failure of the Developer to complete such Corrective Action. As used herein, Corrective Action shall be deemed completed when the applicable agency issues a no further action letter, Governmental Closure Document (or their reasonable equivalent) with respect to the Preserve Parcel or otherwise determines that a Governmental Closure Document is not required for the Preserve Parcel. Developer shall provide a copy to City of any such No Further Action, Governmental Closure Document or other determination that no further Corrective Action concerning the Preserve Parcel is required.

(ii) Modifications. From and after the date of this Agreement, Developer shall have the right to seek and receive from any and all affected governmental agencies, modifications to the Environmental Laws as they may affect the Preserve Parcel and the Corrective Actions; provided, however, that prior to the execution and delivery of the Lease by Developer and the City, City shall approve such modifications.

12.6 Indemnification by Developer. Except only for the Excluded Liabilities, Developer agrees to indemnify, hold harmless and defend the City from and against any and all liabilities, penalties, fines, suits, claims, demands, actions, losses, expenses, investigation and remediation costs, causes of action, proceedings, judgments, executions and reasonable costs of any kind or nature whatsoever (including reasonable attorneys' fees at trial, administrative proceeding and appeal) in connection with, arising out of or related to: (i) Developer's release, discharge, spill, emission or migration of Hazardous Waste at or from the Preserve Parcel; (ii)

Developer's failure to comply with any Corrective Action following the date the Final Approvals are obtained; (iii) Developer's noncompliance with any Environmental Law; (iv) a breach of the terms or conditions of this Section 12. With respect to the defense of any matter for which the City is indemnified, Developer retains the right to select counsel to conduct such defense, which counsel shall be qualified in the applicable field and reasonably acceptable to the City. If City elects to retain counsel in lieu of or in addition to counsel provided by Developer in connection with any matter for which the City claims indemnification, the cost of such additional counsel shall be borne by City.

12.7 City's Responsibilities. Following the date of this Agreement:

(i) City shall cooperate with Developer's efforts to perform and complete all Corrective Action required by this Article and any modifications sought by Developer, including, without limitation, executing all permits, applications, filings and other instruments required by applicable agencies and providing copies of all materials requested by Developer relating to the Corrective Action.

(ii) City shall cooperate with Developer after the date the Final Approvals are obtained to effectuate the assignment of any consent orders, case documents, remediation agreements, grant agreements, memoranda of understanding or other documents or materials relating to the Preserve Parcel and the environmental remediation thereof to Developer to the extent assignable, including without limitation, executing any documents, instruments or certificates necessary to effectuate such assignments or transfers. In the event any of such orders, documents, remediation agreements, grant agreements, memoranda of understanding or other documents or materials are not capable of being assigned to Developer, City shall cooperate with Developer in promptly transmitting any and all notices received by the City pursuant to such documents so that there is no violation that would take place as a result of untimely notice to the Developer.

(iii) Within thirty (30) days of the date of this Agreement, City shall deliver to Developer copies of all files, records, documents, instruments and certificates in the possession or control of City as of the date of this Agreement relating to the Preserve Parcel, its environmental condition or operations.

12.8 City's Indemnity. City agrees, to the extent permitted by law, to indemnify, hold harmless and defend the Developer from and against any and all costs, liabilities, penalties, fines, suits, claims, demands, actions, losses, expenses, investigation and remediation costs, causes of action, proceedings, judgments, executions and reasonable costs of any kind or nature whatsoever (including reasonable attorneys' fees at trial, administrative proceeding and appeal) in connection with, arising out of or related to: (i) any of the Excluded Liabilities and/or (ii) a breach of any terms or conditions of this Section 12 by the City. With respect to the defense of any matter for which the Developer is indemnified, City shall conduct such defense with counsel reasonably satisfactory to Developer. If Developer elects to retain counsel in lieu of or in addition to counsel provided by City in connection with any matter for which the Developer claims indemnification, the cost of such additional counsel shall be borne by Developer.

12.9 Reimbursement of Costs. In the event the City seeks and recovers any costs or any other expenses incurred by it for the Corrective or Remedial Actions or liability incurred under the Environmental Laws with respect to the Preserve Parcel after the date of this Agreement, all such recoveries shall be applied first to any and all non-reimbursed costs and expenses incurred by the City in order to comply with Administrative Orders or Environmental Laws with respect to the Preserve Parcel prior to the date the Final Approvals are obtained, and, thereafter, shall be reimbursed to the Developer for any and all of Developer's non-reimbursed costs and expenses incurred by the Developer to comply with the Environmental Laws under the terms of this Section 12.

12.10 Grants and Subsidies. The City and Miami-Dade County, Florida (the **County**) are parties to that certain First Amended Grant Agreement dated September 16, 1999 (the **Grant Agreement**), in which the County

has agreed to provide the City an annual grant in the amount of One Million and No/100 Dollars ($1,000,000.00) per year (the **Grant**) for the term of the Grant Agreement expiring on April 2, 2016. The City shall use its best efforts to transfer the Grant to the Developer, and to the extent the City is unable to transfer the Grant, the City agrees to make the funds due to the City under the Grant (as may be increased) following the date of this Agreement available to the Developer as long as the Developer has made expenditures for items permitted under the terms of the Grant Agreement (as may be amended). The City further agrees to cooperate with the Developer in good faith and to otherwise use its good faith and diligent efforts to increase the amount of the Grant and extend the term of the Grant Agreement. The City agrees that the Developer shall have the right to participate with the City in its efforts to increase the amount of the Grant and extend the term of the Grant Agreement. In this regard, the City agrees to provide the Developer with reasonable advance notice of any meetings with governmental authorities regarding the Grant Agreement and any public hearings concerning the subject. Developer shall have the right to attend and participate in such meetings and hearings. The City has advised Developer that the City has incurred certain indebtedness associated with the remediation and landfill closure from Bank of America pursuant to City Resolution No. 2000-50 (the **City Remediation Debt**). The current outstanding principal balance of the City Remediation Debt is approximately $2,900,000.00. The City is expecting and is entitled to receive the $1,000,000.00 payment which was due on October 1, 2002 under the Grant and these funds shall be the sole property of the City. Furthermore, the City [illegible] responsible for timely paying the $1,000,000.00 payment of principal and accrued and unpaid interest due on December 1, 2002 with respect to the City Remediation Debt. The City hereby agrees that the City shall not increase the amount of the City Remediation Debt. Provided that all funds under the Grant Agreement are made available to the Developer in accordance with the terms of the Grant Agreement, as presently exists, and this Agreement is in effect Developer shall be responsible for paying a portion of the City Remediation Debt in an amount equal to One Million Four Hundred Thousand and No/100 Dollars ($1,400,000.00) payable as follows: (i) on or before December 1, 2003, Developer shall repay One Million and No/100 Dollars ($1,000,000.00) of the City Remediation Debt, and (ii) on or before December

1, 2004, Developer shall repay Four Hundred Thousand and No/100 Dollars ($400,000.00) of the City Remediation Debt. The City shall be solely responsible for paying the remaining principal balance of the City Remediation Debt, together with all accrued and unpaid interest, in a timely manner and for otherwise complying with all of the other obligations with respect to the City Remediation Debt. The City further agrees to cooperate in good faith with the Developer and to use its good faith and diligent efforts to obtain additional state, federal and other governmental grants and subsidies which may be used to complete the remediation of the Preserve Parcel and landfill closure and make them available to the Developer.

12.11 Termination of Obligations. Notwithstanding any other provisions of this Agreement to the contrary, in the event that the Final Approvals are not obtained or any of the other conditions precedent set forth in Section 8.1 of this Agreement are not satisfied or waived, Developer shall be released from any and all obligations under this Section 12, including, without limitation, to comply with Environmental Laws or conduct Corrective or Remedial Actions in accordance with the Administrative Orders, except only for such obligations which the Developer was required to, and failed to, perform under this Section 12 prior to the termination of this Agreement, which shall survive such termination.

13. Intentionally Deleted.

14. Representations and Warranties.

14.1 Developer's Representations and Warranties. In order to induce the City to enter into this Agreement, Developer makes the following representations and warranties to the City, each of which shall survive the execution and delivery of this Agreement:

(i) Developer is a limited partnership duly organized and validly existing under the laws of the State of Florida, and has full power and capacity to own its properties, to carry on its business as presently conducted by Developer, and to enter into the transactions contemplated by this Agreement.

(ii) Developer's execution, delivery and performance of this Agreement have been duly authorized by all necessary individual,

partnership, corporate and legal actions and do not and shall not conflict with or constitute a default under any indenture, agreement or instrument to which Developer is a party or by which Developer or Developer's property may be bound or affected.

(iii) Except as otherwise previously or concurrently disclosed to the City in writing, there are no actions, suits or proceedings now pending or (to the best of Developer's knowledge) now threatened against or affecting Developer or its property before any court of law or equity or any administrative board or tribunal or before or by any governmental authority.

(iv) This Agreement constitutes the valid and binding obligation of Developer, enforceable against Developer, and its successors and assigns, in accordance with their respective terms, subject to bankruptcy, insolvency and other similar laws affecting the rights of creditors generally.

14.2 City's Representations and Warranties. In order to induce Developer to enter into this Agreement, the City makes the following representations and warranties to Developer, each of which shall survive the execution and delivery of this Agreement:

(i) The City is a municipal corporation duly organized and validly existing under the laws of the State of Florida; and has full power and capacity to own its properties, to carry on its business as presently conducted by the City, and to enter into the transactions contemplated by this Agreement.

(ii) The City's execution, delivery and performance of this Agreement have been duly authorized by all necessary legal actions and do not and shall not conflict with or constitute a default under any indenture, agreement or instrument to which the City is a party or by which the City or the City's property may be bound or affected.

(iii) This Agreement constitutes the valid and binding obligation of the City, enforceable against the City, and its successors and assigns, in accordance with their respective

terms, subject to bankruptcy, insolvency and other similar laws affecting the rights of creditors generally.

(iv) The City has received no notice of condemnation or eminent domain proceedings with respect to all or any portion of the Preserve Parcel.

15. Financing; Rights of Pledgee.

15.1 This Agreement shall not be pledged or encumbered in any manner prior to the execution and delivery of the Lease by Developer and the City. From and after the execution and delivery of the Lease by Developer and the City, Developer, and any permitted successor or assign of Developer, may, without the City's consent, from time to time collaterally assign, pledge, mortgage or encumber Developer's interest in this Agreement to the insurance companies, banks, trust companies, pension funds, retirement funds, governmental agencies and other financial or lending institutions identified on **Exhibit "K"** attached hereto or any other insurance company, bank or trust company, pension or retirement fund or trust, governmental agency or fund, or other financial or lending institution whose loans on real estate are regulated by state or federal laws if approved by the City after review of the proposed lender's financial condition (an "**Institutional Lender**"). Developer shall endeavor to finance the Project with Institutional Lenders with offices in Miami-Dade, Broward and/or Palm Beach County, Florida; however, Developer shall not be required to do so. Any such collateral assignment, pledge, mortgage or encumbrance upon Developer's interest in this Agreement in favor of an Institutional Lender and the same may be extended, modified, amended or replaced, is referred to as a **Pledge**, the holder of which shall be referred to as the **Pledgee**. Any Pledge shall by its terms be made expressly subject to all of the provisions, covenants, conditions, exceptions and reservations contained in this Agreement. City shall not be bound to recognize any Pledgee or to give any Pledgee the notices, rights and protections contemplated under this Agreement unless such Pledgee or Developer shall have notified the City of the existence of such Pledge and of the name and United States address of such Pledgee within twenty (20) days of the execution of such pledge.

15.2 City agrees with and for the benefit of each Pledgee and the successors and assigns of each Pledgee:

(i) When giving notice to Developer with respect to any default under this Agreement or any exercise of any right to terminate this Agreement, City will also give a copy of such notice to each Pledgee at the address of each Pledgee furnished to City.

(ii) Should Developer default in respect to any of the provisions of this Agreement, any Pledgee shall have the right, but not the obligation, to cure such default whether the same consists of the failure to pay any sum due under this Agreement or the failure to perform any other covenant which Developer is required to perform under this Agreement, and the City shall accept only proper performance by or on behalf of such Pledgee as though, and with the same effect as if, the same had been done or performed by Developer. A Pledgee will have only the same period of time after the service of such notice upon it within which to cure the default specified in such notice, or cause it to be cured, which is the same period for cure, if any, as is given to Developer under this Agreement in respect of the specified default after the giving of such notice to Developer.

(iii) A Pledgee (or its designee or nominee) may become the legal owner and holder of the interest of Developer under this Agreement, by foreclosure or other enforcement proceedings, or by obtaining an assignment of this Agreement in lieu of foreclosure or through settlement of or arising out of any pending or threatened foreclosure proceeding, without City's consent, subject always to the applicable terms and provisions of this Agreement.

15.3 Any notice or other communication which City shall desire or is required to give to or serve upon Pledgee shall be in writing and shall be served personally or by overnight courier service (such as Federal Express or UPS) addressed to such Pledgee at its address as set forth in the notice to City, or at such other address as shall be designated from time to time by such holder by notice in writing given to City. Any notice or other communication

which any Pledgee shall desire or is required to give to or serve upon City shall be deemed to have been given or served if sent as set forth in the provisions of the Agreement providing for notices to City.

15.4 City will not modify, amend or accept a surrender of this Agreement without providing the Pledgee with at least ten (10) days prior written notice.

15.5 City agrees to make such modifications to this Section 15 as may be reasonably required by the Pledgee as a condition to providing financing for the Project.

16. Miscellaneous Matters.

16.1 Environmental Park Parcel. Developer shall develop an environmental park on the Environmental Park Parcel, subject to the terms and provisions set forth below and as otherwise required of the City. The wetlands could potentially be restored by clearing the exotic vegetation, removing portions of the dyke that currently separate the Preserve Parcel from the lands owned by the State of Florida, lowering the elevation of the land at strategic locations and cutting in some canals that will restore the tidal flow of water to the area. A boardwalk nature trail could be constructed and canoe trails incorporated into the plan. A small canoe landing and boat house may be built that would allow residents to either rent canoes or launch their own canoes to explore the site. The cost of the improvements would be funded through the sale of salt water wetlands mitigation credits. Upon the execution and delivery of the Lease by the Developer and the City or earlier, as agreed by the parties, Developer will fund the start up costs associated with permitting the site as a salt water wetlands mitigation bank, managing the rehabilitation of the wetlands, marketing and selling the mitigation credits. Any net proceeds from the sale of such credits after repayment to the Developer of the costs previously advanced by Developer will be shared with the City on a 50%-50% basis. Upon completion of the environmental park by Developer, the operation of such park shall be the sole responsibility and cost of the City. Furthermore, the City and Developer agree to use good faith and diligent efforts to obtain the agreement of Miami-Dade County to permanently close the extension of N.E. 135th street through the Environmental Park Parcel.

16.2 Improvement Liens and Impact Fees. The City represents and warrants to Developer that the City has not currently imposed any improvement liens or impact fees on the Preserve Parcel, and in partial consideration for the obligations and duties of Developer under this Agreement, none shall be imposed upon the Preserve Parcel during the term of this Agreement except in connection with the imposition of such improvements liens or impact fees on a citywide basis.

16.3 Sales Center; Temporary Facilities for Building Department. The City agrees that prior to obtaining the Final Approvals and thereafter the Developer shall be permitted to construct a sales center facility and related surface parking and signage upon the Preserve Parcel, provided the Developer obtains any necessary permits and approvals from applicable governmental authorities. Upon obtaining the Final Approvals, the Developer shall provide temporary facilities on the Preserve Parcel to accommodate approximately 10 staff members of the City (including members of its building division), provided Developer obtains any necessary permits and approvals from applicable governmental authorities. The City agrees to cooperate with Developer in this regard and to join in such applications and submittals as may be required to obtain such permits and approvals.

16.4 Community Development District. In the event that the City and Developer mutually agree that the formation of a community development district (a CDD) encompassing the Preserve Parcel is beneficial to the parties, the City and Developer shall cooperate in good faith to form a CDD in accordance with the Uniform Community Development District Act of 1980, Chapter 190, Florida Statutes, as amended.

16.5 Contractors. Developer agrees that to the extent the Developer does not elect to serve as the general contractor, Developer shall only be permitted to retain the general contractors set forth on **Exhibit "L"** attached or such other general contractors who are subsequently approved by the City, to construct the Project upon the Preserve Parcel.

16.6 City Representative. The City appoints the City Manager of the City of North Miami to serve as its representative. The City Manager is authorized to execute and deliver on behalf of the City all consents and/or approvals provided they have been approved by

the City Attorney.

16.7 Single-Purpose Entity. Developer acknowledges and agrees that Developer has been created for the sole purpose of developing the Project and will be maintained throughout the term of this Agreement as a single purpose, bankruptcy remote entity.

16.8 Developer Default and Remedies. The occurrence of any one or more of the following events shall be deemed a "Developer Event of Default" under this Agreement:

(i) the failure to fulfill any covenants and obligations under this Agreement or the Lease and such failure shall continue for a period of thirty (30) days following written notice from City; however, in the event that such failure cannot be reasonably be cured within such thirty (30) day period, so long as the City determines such failure was beyond the reasonable control of Developer or did not result from a lack of good faith and Developer has promptly commenced the action(s) necessary to cure the failure and diligently and continuously prosecutes such action, the thirty (30) day cure period shall be extended for such period as may reasonably be necessary to cure such failure; or

(ii) a voluntary petition is filed by Developer for relief under Title 11 of the United States Code, as amended or any other present or future federal or state insolvency, bankruptcy or similar law at any time subsequent to the date of this Agreement; or an involuntary petition for relief is filed, at any time subsequent to the date of this Agreement, against Developer under any such laws and such petition is not dismissed within ninety (90) days.

Upon a Developer Event of Default, in addition to all remedies available at law and/or equity, the City shall have the right to terminate this Agreement and the Lease (except to the limited extent that the City has expressly agreed to recognize any sublease or other occupancy interest in the Preserve Parcel in the event of a termination of the Lease, each such sublease and/or other occupancy interest shall not be terminated and shall remain in effect) by providing written notice to Developer, in which event the

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parties shall be released from all further obligations under this Agreement, and the City shall be relieved from any and all obligations to reimburse the Developer for any amounts whatsoever. Notwithstanding the foregoing, (i) with respect to Section 9.4 of this Agreement, the City's sole remedy shall be as provided in such Section, and (ii) in no event shall the City be permitted to terminate the Lease.

16.9 Bankruptcy Provisions. In the event an order for relief is entered in a bankruptcy case commenced by or against the Developer, the parties agree as follows:

(i) This Agreement and the Lease to be entered into by the parties pursuant to the terms hereof are intended by the parties to be, and shall be construed as, integral parts of a single contract, which must be assumed or rejected by the Developer as a whole and not separately. Developer hereby waives any right that may otherwise exist to seek to assume or reject any individual part of this Agreement or the Lease without simultaneously seeking similar treatment of all other parts.

(ii) If so requested by the City, Developer agrees that it will (a) promptly initiate efforts to assume this Agreement and the Lease entered into under this Agreement pursuant to Section 365 of the Bankruptcy Code and (b) expeditiously pursue such efforts to a conclusion.

16.10 Minority Participation. The Developer agrees that in connection with the construction of the Project: (i) it will use all commercially reasonable efforts to insure affirmative action in the employment, recruitment advertising to attract and retain qualified minority and female contractors and subcontractors, (ii) it will provide a reasonable opportunity in the recruitment, recruitment advertising and hiring of qualified contractors and subcontractors whose residence or primary place of business is in the City of North Miami, (iii) it will use all commercially reasonable efforts to insure affirmative action to retain qualified employees regardless of race, color, place of birth, religion, national origin, sex, age, marital status, veteran, sexual orientation and disability status, (iv) it will provide a reasonable opportunity in the recruitment, advertising and hiring of qualified employees residing in the City of North Miami, and (v) it will, to the

extent permitted by law, award at least twenty two percent (22%) of the total Project costs (based on the total hard construction costs under construction contracts for the Project) to Minority Contractors (as defined in the Lease).

17. Miscellaneous Provisions.

17.1 No Permit. This Agreement is not and shall not be construed as a development agreement under Chapter 163, Florida Statutes, nor a development permit, development approval or authorization to commence development, nor shall it relieve the Developer of the obligations to obtain necessary Comprehensive Plan amendments and development approvals that are required under applicable law and under and pursuant to the terms of this Agreement.

17.2 Good Faith; Further Assurances; No Cost. The parties to this Agreement have negotiated in good faith. It is the intent and agreement of the parties that they shall cooperate with each other in good faith to effectuate the purposes and intent of, and to satisfy their obligations under, this Agreement in order to secure to themselves the mutual benefits created under this Agreement; and, in that regard, the parties shall execute such further documents as may be reasonably necessary to effectuate the provisions of this Agreement; provided that the foregoing shall in no way be deemed to inhibit, restrict or require the exercise of the City's police power or actions of the City when acting in a quasi-judicial capacity. Wherever in this Agreement a provision requires cooperation, good faith or similar effort to be undertaken at no cost to a party, the concept of no cost shall not be deemed to include any cost of review (whether legal or otherwise), attendance at meetings, hearings or proceedings and comment and/or execution of documents, all such costs to be borne by the party receiving a request to so cooperate, act in good faith or so forth.

17.3 Recording of this Agreement. This Agreement shall be recorded in the Public Records of Miami-Dade County, Florida. The provisions hereof shall remain in full force and effect during the term and subject to the conditions of this Agreement and shall be binding upon the undersigned, their heirs, legal representatives, estates, successors, grantees and assigns.

17.4 Intentionally Deleted.

17.5 Omissions. The parties recognize and agree that the failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restriction notwithstanding any such omission.

17.6 No Broker. The parties represent and warrant to each other that no real estate broker, salesman or finder was involved in this transaction, and each party fully indemnifies the other from any breach of the foregoing representation and any claim for brokerage commission that may be made because of such party's actions. The terms of this Section 17.6 shall survive the termination of this Agreement.

17.7 Estoppel Certificates. Developer and the City shall, at any time and from time to time, within thirty (30) days after written request by another party, execute, acknowledge and deliver to the party which has requested the same (and its lender(s) if so requested) a certificate stating that: (i) this Agreement is in full force and effect and has not been modified, supplemented or amended in any way, or, if there have been modifications, the Agreement is in full force and effect as modified, identifying such modification agreement, and if the Agreement is not in full force and effect the certificate shall so state the reasons why, (ii) the Agreement, together with the Leases, all as modified represent the entire agreement between the parties as to the Preserve Parcel or, if it does not, the certificate shall so state why; and (iii) there are no existing defenses or offsets which Developer or the City, as the case may be, has against the enforcement of the Agreement by another party, or if there are any defenses or offsets, the certificate shall so state. The party to whom any such certificate shall be issued may rely on the matters therein set forth and thereafter the party issuing the certificate shall be estopped from denying the veracity or accuracy of the same.

17.8 Notices. Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows:

If to the City:	776 N.E. 125th Street North Miami, Florida 33161 Attn: City Manager
With a copy to:	776 N.E. 125th Street North Miami, Florida 33161 Attn: City Attorney
With a copy to:	Kurzban, Kurzban, Weinger and Tetzeli, P.A. 2650 S.W. 27th Avenue Miami, Florida 33133 Attn: Steven M. Weinger, Esq.
If to the Developer:	4651 Sheridan Street, Suite 200 Hollywood, Florida 33021 Attn: Michael Swerdlow
With a copy to:	Greenberg, Traurig, P.A. 1221 Brickell Avenue Miami, Florida 33131 Attn: Matthew B. Gorson, Esq.

Notices personally delivered or sent by overnight courier shall be deemed given on the date of delivery and notices mailed in accordance with the foregoing shall be deemed given three (3) days after deposit in the U.S. mails. Each party may at any time hereafter by giving written notice to the other party as above provided, change its address for notices or demands or the name of the person to whom notices or demands may be sent. The terms of this Section 17.8 shall survive the termination of this Agreement.

17.9 Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

17.10 Force Majeure; Moratorium. "Force Majeure" shall mean and refer to any Act of God, earthquake, hurricane, flood, riot, war, order of civil or military or naval authority, fire, strikes, extraordinary weather conditions, labor disputes or any other course of

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events reasonably beyond Developer's control (provided, however, that the inability to fund any obligation shall never be deemed a Force Majeure). To the extent a party is unable to complete an obligation as a result of a Force Majeure, the time period for such party to complete its obligation shall be extended by a reasonable period of time depending upon the nature of the Force Majeure event. Furthermore, to the extent there exists a water, sewer or other utility moratorium or any other moratorium which precludes the issuance of the Final Approvals or building permits or the construction of the Project, the time periods for (i) obtaining the Final Approvals, (ii) Developer completing its obligations hereunder, and (iii) Developer making any payments hereunder shall be tolled until such time as the moratorium is no longer in effect.

17.11 No subordination. In no event shall the City be obligated to subordinate, hypothecate or otherwise encumber its fee simple ownership interest in the Preserve Parcel. The foregoing is not intended to preclude the City's obligation to join in and execute plats, easements and covenants reasonably required to be executed by the City as a land owner in connection with obtaining the Development Approvals and thereafter developing the Project.

17.12 Construction.

(i) This Agreement shall be construed and governed in accordance with the laws of the State of Florida. The parties to this Agreement have participated fully in the negotiation and preparation and, accordingly, this Agreement shall not be more strictly construed against either of them.

(ii) In construing this Agreement, the use of any gender shall include every other and all genders, and captions and section and paragraph headings shall be disregarded.

(iii) All of the exhibits attached to this Agreement are incorporated in, and made a part of, this Agreement.

17.13 Severability. In the event any term or provision of this Agreement be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines,

and the remainder of this Agreement shall be construed to be in full force and effect.

17.14 Litigation. In the event of any litigation between the parties under this Agreement, (i) the parties shall and hereby submit to the jurisdiction of the state and federal courts of the State of Florida, (ii) venue shall be in Miami-Dade County, Florida, and (iii) the prevailing party shall be entitled to reasonable attorney's fees and court costs at all trial and appellate levels. The terms of this Section 17.14 shall survive the termination of this Agreement.

17.15 Time of Essence. Time shall be of the essence for each and every provision hereof.

17.16 Entire Agreement. This Agreement, together with the Exhibits, constitute the entire agreement and understanding between the parties with respect to the subject matter and there are no other agreements, representations or warranties other than as set forth in this Agreement. This Agreement may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought.

17.17 CCCL. Pursuant to Section 161.57, Florida Statutes, the parties waive any obligation on the part of the others to provide an affidavit or survey meeting the requirements of Chapter 472 Florida Statutes delineating the location of the coastal construction control line on any properties reflected in this Agreement.

17.18 Early Entry. Provided that Developer has obtained the [illegible] insurance required pursuant to Section [illegible] of this Agreement, Developer, and Developer's agents and contractors shall have the right during the term of this Agreement to enter upon the Property at reasonable times and with the prior written consent of the City, for purposes of (i) inspection and investigation, including making tests and studies thereon, and (ii) satisfying the conditions precedent set forth in Section 8 of this Agreement. Developer agrees to indemnify, defend and hold harmless the City from and against all liabilities, damages, claims, costs, fees and expenses whatsoever (including reasonable attorney's fees and court costs at trial and all appellate levels) arising out of or resulting from any such inspection or investigation. Notwithstanding anything to the contrary contained in

this Agreement, the indemnification provisions of this Section shall survive any cancellation or termination of this Agreement.

17.19 Assignability. Neither Developer nor the City shall have the right to assign this Agreement without the consent of the other party. Notwithstanding the foregoing, Developer shall be permitted to (i) designate an affiliate(s) of Developer ("**Developer's Designee**") to execute the Lease, provided the beneficial owners of Developer's Designee are the same as the beneficial owners of Developer or are otherwise disclosed and approved by the City, and (ii) pledge its interest under this Agreement to an Institutional Lender(s) providing financing for the Project. For purposes of this Agreement, "affiliate" means, with respect to Developer, any entity directly or indirectly controlling, controlled by, or under common control with Developer.

17.20 Third Party Beneficiary. The parties acknowledge and agree that there are no third party beneficiaries under this Agreement.

17.21 Payment and Performance Bonds. Prior to commencing the construction of any vertical components of the Project and/or any Off-Site Improvements, the Developer shall obtain through its general contractor or otherwise, a payment and performance bond for such vertical components (including all approved change orders), the terms of which shall be subject to the approval of the City, each written by a corporate surety qualified to do business in the State of Florida and otherwise acceptable to the City. The Developer shall use its good faith efforts to have the City named as an obligee under the payment and performance bond; however, in the event the City is not named as an obligee, the Developer shall provide the City with a guaranty of completion with respect to such vertical components in form and substance, and from an entity or individual(s), reasonably acceptable to the City. In the event that the Developer is acting as a general contractor, the Developer shall obtain payment and performance bonds which meet the requirements provided above from all subcontractors performing vertical work at the Project with a contract amount exceeding Five Hundred Thousand and No/100 Dollars ($500,000.00). If the surety on any bond furnished by the Developer is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements of other

applicable laws or regulations, Developer shall within ten (10) business days substitute another bond and surety, both of which must be acceptable to City.

17.22 Intentionally Deleted.

17.23 Late Fees. In the event that any party to this Agreement fails to timely make a payment due to the other party such amount shall accrue interest at the rate of twelve percent (12%) per annum from the date due until the date paid.

17.24 Impact Fee Credits. The City agrees to use its good faith and diligent efforts to assist the Developer in obtaining any library, school and other non-City governmental impact fee credits available with respect to the development of the Project and/or Off-Site Improvements.

17.25 Rent Setoff. In the event the City fails to timely satisfy its obligations and covenants under this Agreement, in addition to all other remedies available at law and/or equity, Developer may offset such amounts against the Minimum Rent and Additional Rent due under the Lease or any other payment obligations owed by Developer to City under this Agreement.

17.26 Cooperation. City and Developer each agree to (i) perform their respective obligations under this Agreement in good faith, (ii) cooperate with each other in good faith to facilitate the development of the Project and otherwise consummate the transactions contemplated by this Agreement, and (iii) not unreasonably withhold, condition or delay any approval and/or consent required under this Agreement.

17.27 Notice Regarding Liens. Developer acknowledges and agrees that no interest of the City in the Preserve Parcel shall be subject to liens for improvements made by Developer. In this regard, the Developer and the City agree to record a notice of the foregoing in the public records against the Preserve Parcel.

17.28 Real Estate Taxes. Although the City and Developer do not believe that there is a legal basis for the County tax collector to impose an ad valorem real estate tax upon the Developer's interest in the Preserve Parcel prior to the execution and delivery of the Lease, the parties agree that to the extent an ad valorem real estate tax is imposed as a result of

the execution and delivery of this Agreement and prior to the execution and delivery of the Lease, the Developer shall be responsible for paying such taxes. The City agrees that the Developer shall have the right to contest any such taxes, and the City will cooperate with the Developer in good faith with respect to such contest.

17.29 Public Disclosure Requirements. Throughout the term of this Agreement and the Lease, all documents, records and materials of any nature relating to construction, sale, lease, operation or any other activity occurring on the Preserve Parcel or off-site with respect to the Off-Site Improvements shall be public records and shall be provided as required by Chapter 119, Florida Statutes, and pursuant to the City's Citizens' Bill of Rights. This provision shall be applicable to the Developer and its partners, stockholders, contractors, subcontractors, employees, agents, pledgees, successors, assigns and any condominium association created to govern any portion of the Preserve Parcel. Notwithstanding the foregoing, nothing set forth in this Agreement shall require the disclosure of attorney-client privileged documentation or shall be deemed to constitute a waiver of such privilege. The City's sole remedy under this Section shall be against the party who fails to provide such information, and the City shall not be permitted to terminate this Agreement or the Lease if a party other than Developer fails to provide such information.

17.30 Covenant to Budget and Appropriate; Limited Obligations. Subject to the limitations set forth below, the City hereby covenants to budget and appropriate from Non-Ad Valorem Funds amounts sufficient to pay [illegible] under this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the obligations under the City under this Agreement shall not be and shall not constitute an indebtedness of the City, within the meaning of any constitutional, statutory or charter provision or limitation, but shall be special, limited obligations of the City payable solely, as limited below, from lawfully available revenues of the City derived from sources other than ad valorem taxation on real or personal property (**Non-Ad Valorem Funds**), which the City budgets and appropriates from time to time for such purpose. Neither the Developer nor any other party shall ever have the right to compel the exercise of the ad valorem taxing power of the City or taxation in any

form of any real or personal property to pay the obligations of the City under this Agreement.

The City does not covenant to maintain any services or programs, now provided or maintained by the City, which generate Non-Ad Valorem Funds. This Agreement does not create any lien upon or pledge of such Non-Ad Valorem Funds, nor does it preclude the City from pledging in the future its Non-Ad Valorem Funds, nor does it require the City to levy and collect any particular Non-Ad Valorem Funds, nor does it give the Developer or any other party under this Agreement a prior claim on the Non-Ad Valorem Funds as opposed to claims of general creditors of the City. The City's ability to budget and appropriate Non-Ad Valorem Funds for the payment of its obligations under this Agreement is subject in all respects to (i) the payment of obligations secured by a pledge of such Non-Ad Valorem Funds heretofore or hereinafter entered into (including the payment of debt service on bonds and other debt instruments), (ii) the restrictions of Section 166.241(3), Florida Statutes, which provides, in part, that the governing body of each municipality make appropriations for each fiscal year which, in any one year, shall not exceed the amount to be received from taxation or other revenue sources, and (iii) the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the City or which are legally mandated by applicable law.

17.31 No Financial Discrimination. Developer agrees not to discriminate among condominium unit purchasers based upon the annual income earned by such purchasers, provided such purchasers otherwise pay the required deposits and qualify for any financing necessary to acquire the condominium units.

17.32 Financial Accommodations. The parties acknowledge and agree that this Agreement is one pursuant to which the City provides material financial accommodations to the Developer, including, without limitation, the funds or property provided to the Developer pursuant to Article 9 of this Agreement.

17.33 Non-Delegable Obligations. The parties acknowledge and agree that, in entering into this Agreement, the City has relied on the particular and specialized experience, knowledge and expertise of the Developer in developing complex multi-use projects of the type contemplated herein. The Developer agrees that

07

except as expressly permitted under this Agreement, Developer will not delegate or assign this Agreement or any of the Developer's rights or duties under this Agreement to any other person.

EXECUTED as of the date first above written in several counterparts, each of which shall be deemed an original, but all constituting only one agreement.

Signed, sealed and delivered in the presence of:

CITY OF NORTH MIAMI, FLORIDA, a municipal corporation

By: _____
Joe Celestin, Mayor

By: Irma Plummer
Irma Plummer, City Manager

Attest: Barbara Jorgensen, Deputy
Simon Bloom, City Clerk

Approved as to Form:

John Dellaglorida 12-13-02
John Dellaglorida, City Attorney

DEVELOPER:

PRESERVE PARTNERS, LTD., a Florida limited partnership

By: PRESERVE PARTNERS, LLC, a Florida limited liability company, its authorized general partner

By: _____
Michael Swerdlow, President

Joel Goldman
Joel Goldman

Brett M. Dill
Brett M. Dill

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 13th day of DECEMBER, 2002 by Joe Celestin, as Mayor, Irma Plummer, as City Manager and Simon Bloom, as City Clerk, of the CITY OF NORTH MIAMI, FLORIDA, a Florida municipal corporation, on behalf of the municipal corporation. They personally appeared before me, are personally known to me or produced ____ as identification.

Notary: Mayda Pineda

[NOTARIAL SEAL]

Print Name: MAYDA PINEDA

Notary Public, State of Florida

My commission expires: 4-16-03

Mayda Pineda
Commission # CC 813163
Expires Apr. 16, 2003
Bonded Thru
Atlantic Bonding Co., Inc.

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 13th day of December, 2002 by Michael Swerdlow as President of Preserve Partners, LLC, a Florida limited liability company which is the managing general partner of Preserve Partners, Ltd., a Florida limited partnership, on behalf of the limited liability company and limited partnership. He/she personally appeared before me, is personally known to me or produced _____ as identification.

Notary: Mayda Pineda

Print Name: MAYDA PINEDA

[NOTARIAL SEAL]

Mayda Pineda
Commission # CC 813163
Expires Apr. 16, 2003
Bonded Thru
Atlantic Bonding Co., Inc.

Notary Public, State of Florida

My commission expires: 4-16-03

SCHEDULE OF EXHIBITS

A	=	PRESERVE PARCEL LEGAL DESCRIPTION
B	=	ENVIRONMENTAL PARK PARCEL SKETCH
C	=	CONCEPTUAL PLANS FOR THE PROJECT
D	=	CHARTER SCHOOL SITE LEGAL DESCRIPTION
E	=	NGB TRAINING FACILITY SITE LEGAL DESCRIPTION
F	=	DEVELOPMENT APPROVALS
G	=	DEVELOPMENT APPROVALS SCHEDULE
H	=	LEASE FORM
I	=	TITLE COMMITMENT
J	=	ADMINISTRATIVE ORDERS
K	=	INSTITUTIONAL LENDERS
L	=	APPROVED GENERAL CONTRACTORS

\\MIA-SRV01\GOLDMANJ\1423940v15\%$PW15!.DOC\12/13/02

EXHIBIT "A"

MUNISPORT SITE
CITY OF NORTH MIAMI, MIAMI-DADE COUNTY, FLORIDA

LEGAL DESCRIPTION

A TRACT OF LAND IN SECTION 21, TOWNSHIP 52 SOUTH, RANGE 42 EAST OF MIAMI-DADE COUNTY, FLORIDA: BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID SECTION 21, THENCE S87°03'12"W, ALONG NORTH LINE OF THE NE ¼ OF SAID SECTION 21, FOR 1,325.35 FEET TO THE NORTHEAST CORNER OF THE WEST ONE-HALF OF THE NE ¼ OF SAID SECTION 21, BEING THE POINT OF BEGINNING OF HEREINAFTER DESCRIBED TRACT OF LAND. FROM SAID POINT OF BEGINNING, THENCE CONTINUE S87°03'12"W, ALONG THE NORTH LINE OF THE NE ¼ OF SAID SECTION 21, ALSO BEING THE SOUTH RIGHT-OF-WAY LINE OF NE 151ST STREET , FOR 890.36 FEET TO A POINT OF CURVATURE OF A CIRCULAR CURVE TO THE LEFT; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE TO THE LEFT. BEING CONCAVE TO THE SOUTHEAST AND HAVING FOR ITS ELEMENTS A CENTRAL ANGLE 08°04'36", A RADIUS OF 1070.92 FEET FOR AN ARC DISTANCE OF 150.96 FEET, ALONG SAID SOUTH RIGHT-OF-WAY LINE, TO THE POINT OF TAGENCY; THENCE S78°58'36"W FOR 200.00 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE TO THE RIGHT; THENCE WESTERLY ALONG THE ARC OF SAID CURVE TO THE RIGHT, BEING CONCAVE TO THE NORTH AND HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF 07°27'06", A RADIUS OF 1,220.92 FEET, FOR AN ARC DISTANCE OF 158.79 FEET, CONTINUING ALONG SAID SOUTH RIGHT-OF-WAY LINE TO THE POINT OF TAGENCY; THENCE S86°25'29"W, ALONG SAID RIGHT-OF-WAY LINE, ALSO BEING A LINE 50 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE NW ¼ OF SAID SECTION21, FOR 252.37 FEET OF THE POINT OF CURVATURE OF A CIRCULAR CURVE TO THE LEFT; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THE LEFT, BEING CONCAVE TO THE SOUTHEAST, AND HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF 78°12'01", A RADIUS OF 35.00 FEET, FOR AN ARC DISTANCE OF 44.15 FEET TO THE POINT OF TAGENCY; THENCE S08°13'28"W, ALONG THE EASTERLY RIGHT-OF-WAY LINE OF BISCAYNE BOULEVARD (116 'WIDE) (US-1/SR 5), FOR 588.46 FEET TO THE POINT OF INTERSECTION WITH THE SOUTH LINE OF THE NE ¼, OF THE NW ¼ OF SAID SECTION 21; THENCE N87°06'12"E, ALONG THE LAST DESCRIBED LINE FOR 472.08 FEET TO THE SOUTHEAST CORNER OF THE NE ¼ , OF THE NE ¼, OF THE NW ¼ OF SAID SECTION 21; THENCE S02°56'47"E, ALONG THE WEST LINE OF THE NE ¼ OF SAID SECTION 21, FOR 1,978.50 FEET, TO THE CENTER OF SAID SECTION 21; THENCE S87°14'59"W, ALONG THE NORTH LINE OF THE SW ¼ OF SAID SECTION 21, FOR 984.17 FEET TO THE POINT OF INTERSECTION WITH THE EASTERLY RIGHT-OF-WAY OF SAID BISCAYNE BOULEVARD (100 'WIDE); THENCE S14°56'14"W, ALONG SAID RIGHT-OF-WAY, FOR 207.06 FEET; THENCE N87°21'01"E, ALONG A LINE THAT IS 459.66 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE NORTH ¼ OF THE SW 1.4 OF SAID SECTION 21, FOR 891.20 FEET; THENCE S14°56'14"W FOR 482.26 FEET TO A POINTON THE SOUTH LINE OF THE NORTH ¼ OF SAID SW ¼; THENCE S87°21'01"W, ALONG LAST DESCRIBED LINE, FOR 26.63 FEET TO THE

NORTHWEST CORNER OF THE NE ¼, OF THE SE ¼, OF THE NE ¼, OF THE SW ¼ OF SAID SECTION 21; THENCE S02°59'07"E, ALONG THE WEST LINE OF SAID NE ¼, SE ¼, NE ¼, FOR 329.13 FEET; THENCE S87°24'01"W, ALONG THE NORTH LINE OF THE SOUTH ½ OF THE SE ¼, OF THE NE ¼, OF THE SW ¼ OF SAID SECTION 21, FOR 331.83 FEET TO THE NORTHWEST CORNER OF SAID SOUTH ½, SE ¼, NE ¼, SW ¼; THENCE S02°58'49"E, ALONG THE WEST LINE OF THE SW ¼, OF THE SE ¼, OF THE NE ¼, OF THE SW ¼ OF THE SAID SECTION 21, FOR 328.84 FEET TO THE SOUTHWEST CORNER OF SAID SW ¼, SE ¼, NE ¼, SW ¼; THENCE S14°15'09"W FOR 686.62 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH ¾ OF THE SW ¼ OF SAID SECTION 21; THENCE N87°33'04"E, ALONG LAST DESCRIBED SOUTH LINE FOR, 867.26 FEET TO A POINT ON THE EASTLINE OF THE SW ¼ OF SAID SECTION 21; THENCE N87°31'58"E, ALONG THE SOUTH LINE OF THE NORTH ¾ OF THE SE ¼ OF SAID SECTION 21, FOR 1,327.33 FEET TO THE SOUTHEAST CORNER OF SAID NORTH ¾ OF THE SE ¼; ALSO KNOWN AS THE SE CORNER OF LOT 25 OF "AMENDED PLAT OF R.E. MCDONALD'S SUBDIVISION", ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 2 AT PAGE 22 OF THE PUBLIC RECORDS OF MIAMI-DADECOUNTY, FLORIDA; THENCE N61°11'53"W FOR 119.82 FEET TO A POINT; FROM SAID THE NEXT 100 COURSES WILL BEALONG THE TOP OF BANK WHICH LIES WESTERLY OF THE WETLANDS AS DEPICTED ON SPECIFIC PURPOSE SURVEY BY P.B.S.J., JOB NO. 01-1025.13; DATED 07-13-01, DESCRIBED AS FOLLOWS:

THENCE N72°19'44"E FOR 24.76 FEET; THENCE N52°34'19"E FOR 24.17 FEET;
THENCE N30°26'29"E FOR 17.61 FEET; THENCE N06°50'35"E FOR 27.88 FEET;
THENCE N04°30'55"W FOR 53.11 FEET; THENCE N07°58'36"W FOR 56.75 FEET;
THENCE N10°04'30"W FOR 35.99 FEET; THENCE N01°37'19"W FOR 52.54 FEET;
THENCE N05°30'20"W FOR 56.15 FEET; THENCE N04°36'28"W FOR 50.13 FEET;
THENCE N05°03'02"E FOR 36.76 FEET; THENCE N05°05'35"E FOR 46.22 FEET;
THENCE N01°09'01"W FOR 93.71 FEET; THENCE N00°56'14"E FOR 33.62 FEET;
THENCE N00°35'05"W FOR 57.73 FEET; THENCE N01°34'20"W FOR 94.25 FEET;
THENCE N01°40'43"W FOR 59.30 FEET; THENCE N02°51'40"W FOR 63.67 FEET;
THENCE N00°09'18"E FOR 92.71 FEET; THENCE N02°09'12"E FOR 62.12 FEET;
THENCE N04°06'04"W FOR 50.52 FEET; THENCE N21°22'30"W FOR 53.71 FEET;
THENCE N24°06'21"W FOR 49.10 FEET; THENCE N37°12'40"W FOR 42.20 FEET;
THENCE N47°23'25"W FOR 50.44 FEET; THENCE N40°05'40"W FOR 80.39 FEET;
THENCE N33°28'24"W FOR 57.38 FEET; THENCE N14°55'28"W FOR 52.00 FEET;
THENCE N07°22'38"W FOR 56.41 FEET; THENCE N08°08'33"E FOR 55.39 FEET;
THENCE N34°36'25"E FOR 152.12 FEET; THENCE N18°27'29"E FOR 18.73 FEET;
THENCE N37°23'04"E FOR 51.98 FEET; THENCE N47°00'04"E FOR 59.88 FEET;
THENCE N56°56'53"E FOR 62.68 FEET; THENCE N70°29'36"E FOR 66.06 FEET;
THENCE S88°35'36"E FOR 67.21 FEET; THENCE S78°39'08"E FOR 52.43 FEET;
THENCE S83°14'58"E FOR 37.16 FEET; THENCE N85°45'26"E FOR 19.60 FEET;
THENCE N62°39'09"E FOR 13.69 FEET; THENCE N60°32'47"E FOR 35.98 FEET;
THENCE N76°25'34"E FOR 57.58 FEET; THENCE N76°25'58"E FOR 48.79 FEET;
THENCE N78°56'48"E FOR 33.95 FEET; THENCE N44°04'51"E FOR 3.57 FEET;
THENCE N79°08'43"E FOR 48.08 FEET; THENCE N88°28'12"E FOR 53.11 FEET;
THENCE S87°52'06"E FOR 51.32 FEET; THENCE S87°14'57"E FOR 54.28 FEET;
THENCE N78°09'01"E FOR 22.13 FEET; THENCE N75°53'24"E FOR 43.03 FEET;
THENCE N66°17'29"E FOR 36.13 FEET; THENCE N43°49'23"E FOR 21.69 FEET;

THENCE N36°00'50"E FOR 41.61 FEET; THENCE N46°05'03"E FOR 38.01 FEET; THENCE N17°09'27"E FOR 27.63 FEET; THENCE N13°40'09"E FOR 36.19 FEET; THENCE N24°46'18"E FOR 66.65 FEET; THENCE N37°32'02"W FOR 34.27 FEET; THENCE N08°15'00"W FOR 61.47 FEET; THENCE N09°16'59"W FOR 51.97 FEET; THENCE N28°32'43"W FOR 50.56 FEET; THENCE N53°00'05"W FOR 58.71 FEET; THENCE N69°39'39"W FOR 49.47 FEET; THENCE N69°46'36"W FOR 51.93 FEET; THENCE N61°06'26"W FOR 28.16 FEET; THENCE N51°56'55"W FOR 21.95 FEET; THENCE N35°39'32"W FOR 22.62 FEET; THENCE N13°10'35"W FOR 28.62 FEET; THENCE N05°19'56"W FOR 42.97 FEET; THENCE N02°41'06"E FOR 73.26 FEET; THENCE N02°28'22"E FOR 36.41 FEET; THENCE N06°55'47"E FOR 27.82 FEET; THENCE N19°40'27"E FOR 25.33 FEET; THENCE N29°58'25"E FOR 56.98 FEET; THENCE N17°57'30"E FOR 39.68 FEET; THENCE N03°36'08"W FOR 47.52 FEET; THENCE N03°30'11"W FOR 54.48 FEET; THENCE N06°27'45"W FOR 52.71 FEET; THENCE N04°55'41"W FOR 56.54 FEET; THENCE N10°31'13"W FOR 52.91 FEET; THENCE N10°06'31"W FOR 67.30 FEET; THENCE N06°39'34"W FOR 56.61 FEET; THENCE N05°12'54"W FOR 30.78 FEET; THENCE N01°00'27"E FOR 24.29 FEET; THENCE N14°16'19"E FOR 33.82 FEET; THENCE N29°52'18"E FOR 6.78 FEET; THENCE N26°38'52"E FOR 26.34 FEET; THENCE N16°32'46"E FOR 35.14 FEET; THENCE N00°18'55"E FOR 15.26 FEET; THENCE N66°16'03"W FOR 34.67 FEET; THENCE N60°28'31"W FOR 18.89 FEET; THENCE N58°51'29"W FOR 11.90 FEET; THENCE N72°48'07"W FOR 25.29 FEET; THENCE S86°14'52"W FOR 31.69 FEET; THENCE S87°01'45"W FOR 66.65 FEET; THENCE N85°29'33"W FOR 68.34 FEET; THENCE S78°42'24"W FOR 26.48 FEET; THENCE S33°03'40"W FOR 23.95 FEET

THENCE N88°21'34"W FOR 432.22 FEET TO THE SOUTHWEST CORNER OF THE NE ¼, OF THE NE ¼ OF SAID SECTION 21; THENCE N02°58'36"W, ALONG THE WEST LINE OF THE NE ¼ OF THE NE ¼ OF SAID SECTION 21, FOR 1,321.21 FEET TO THE NORTH LINE OF THE NE ¼ OF SAID SECTION 21, BEING THE SOUTH RIGHT-OF-WAY LINE OF NE 151ST STREET AND BEING THE POINT OF BEGINNING.

SAID PARCEL OF LAND CONTAINS 193.59 ACRES, MORE OR LESS, BY CALCULATION.

EXHIBIT "B"

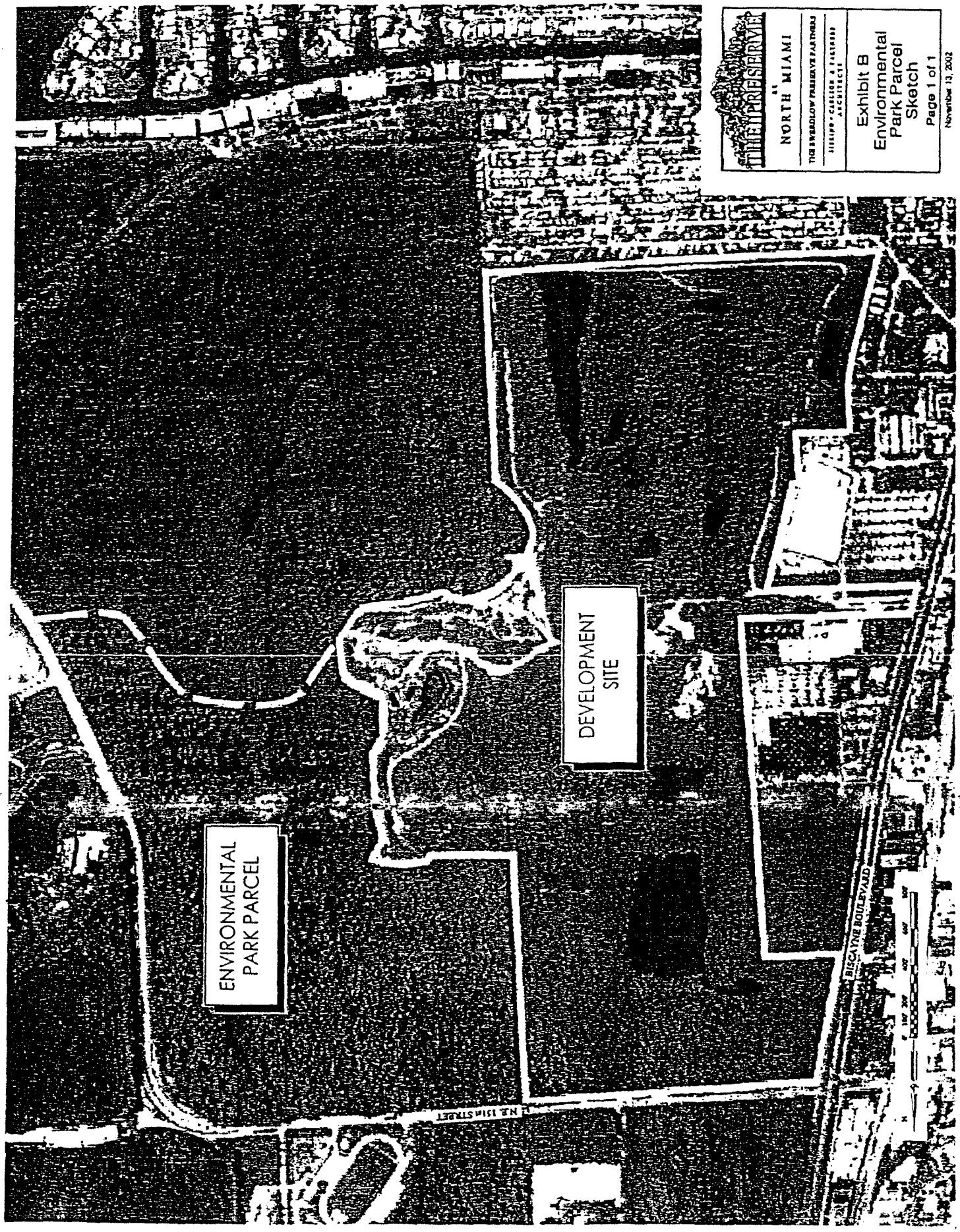
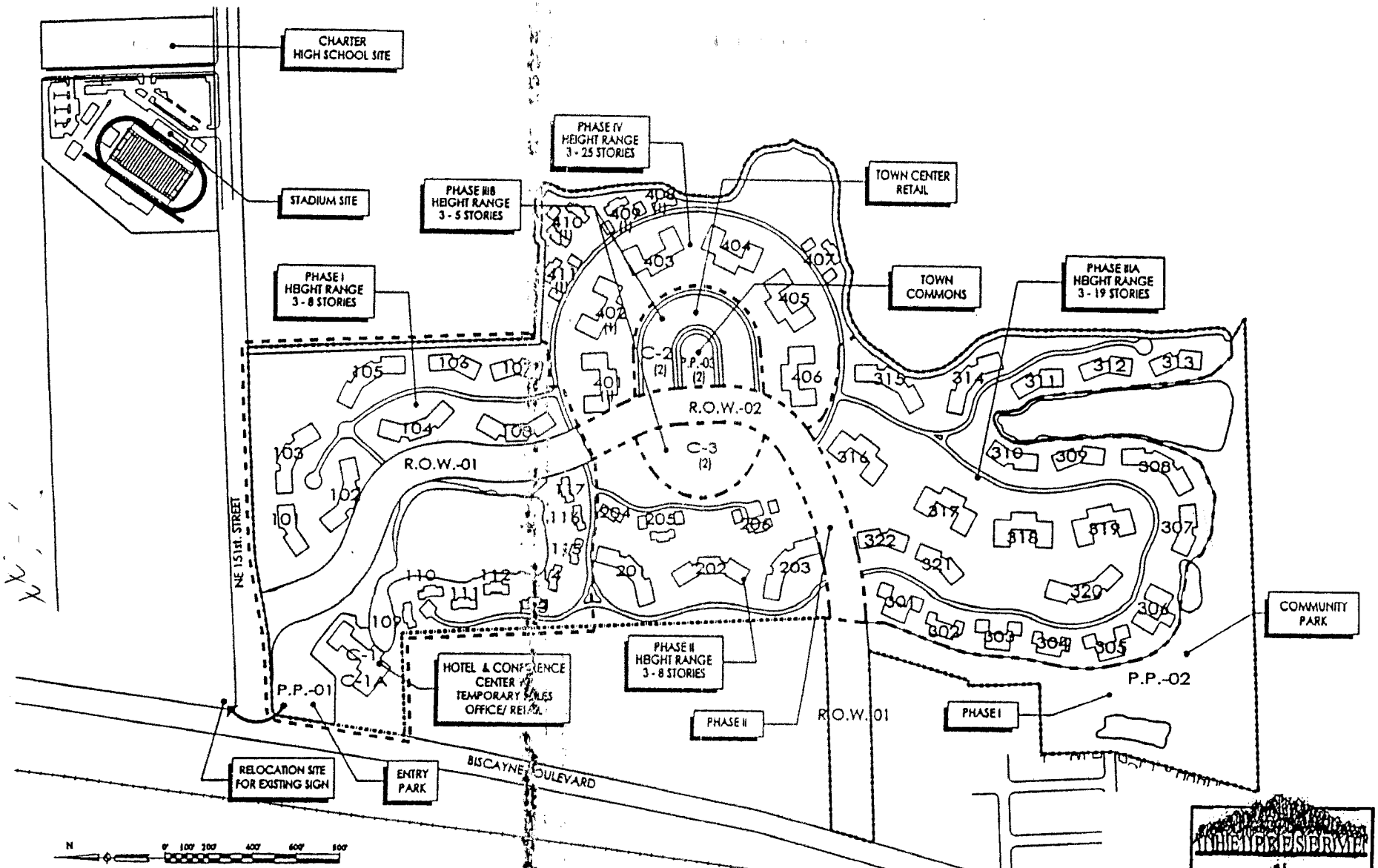

THE RIVER
NORTH MIAMI
Exhibit B
Environmental
Park Parcel
Sketch
Page 1 of 1
November 13, 2002
ENVIRONMENTAL
PARK PARCEL
DEVELOPMENT
SITE
NE 135th STREET
BISCAYNE BOULEVARD

EXHIBIT "C"



Developer's present intention is to develop the mix of residential, retail and hotel uses, of approximately 2,800 residential units with other mixed uses. However, the Concept Plan and the Program Table, Exhibit C, also indicate potential future development that may exceed the densities and intensities noted above. Both parties recognize and agree that certain increases in the above-noted densities and intensities of proposed development may require further review under the provisions of Chapter 380, Florida Statutes, prior to final approval of such modified intensities and densities. Nothing contained herein should be construed as City's final approval of any development that would require such review, with full compliance with the applicable requirements of Chapter 380, Florida Statutes.

(1) These buildings may be built as part of Phase I at the developer's option

(2) These parcels may be built as part of any Phase

The buildi[illegible] eflected hereon are for illustrative purposes only and are subject to change as set forth on

THE PRESERVE of NORTH MIAMI

THE SWERDLOW PRESERVE PARTNERS

SIDDIND - CARLSON & PARTNERS ARCHITECTS

Exhibit C
Proposed
Conceptual
Site Plan

Page 1 of 4

November 13, 2002

EXHIBIT C
PRESERVE PARTNERS
PROGRAM TABLE

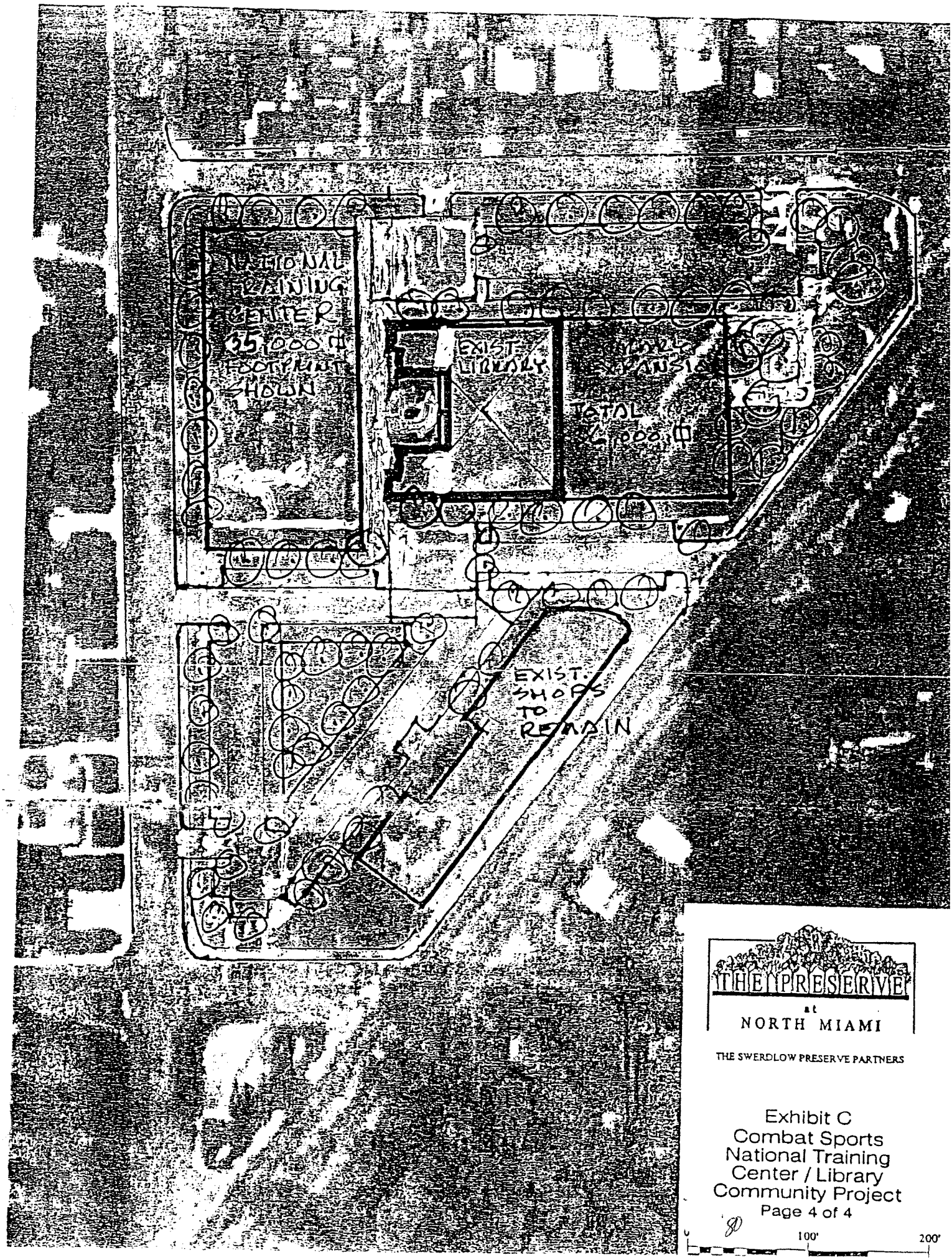
Building Number	Type/Use	Building Height (No. of stories) (1)			Preliminary Number of Units		Note	
		3	4	Var.	2800	5000		
PHASE I								
101	Residential	3	4	4	46	46		
102	Residential	3	4	4	69	69		
103	Residential	3	4	4	69	69		
104	Residential	3	4	4	69	69		
105	Residential	3	4	4	69	69		
106	Residential	3	4	4	46	46		
107	Residential	3	4	8	94	94		
108	Residential	3	4	6	93	93		
109	Residential	3	3	3	8	8		
110	Residential	3	3	3	8	8		
111	Residential	3	3	3	8	8		
112	Residential	3	3	3	8	8		
113	Residential	3	3	3	8	8		
114	Residential	3	3	3	8	8		
115	Residential	3	3	3	8	8		
116	Residential	3	3	3	8	8		
117	Residential	3	3	3	8	8		
SUB TOTAL					627	627		
PHASE II								
201	Residential	3	4	6	105	105		
202	Residential	3	4	8	117	117		
203	Residential	3	4	6	105	105		
204	Residential	3	3	3	12	12		
205	Residential	3	3	3	16	16		
206	Residential	3	3	3	16	16		
SUB TOTAL					371	371		
PHASE III								
301	Residential	3	3	3	20	20		
302	Residential	3	3	3	12	12		
303	Residential	3	3	3	20	20		
304	Residential	3	3	3	12	12		
305	Residential	3	3	3	20	20		
306	Residential	3	3	3	20	20		
307	Residential	3	4	6	51	70		
308	Residential	3	4	6	72	105		
309	Residential	3	4	6	51	70		
310	Residential	3	4	6	51	70		
311	Residential	3	4	6	51	70		
312	Residential	3	4	6	51	70		
313	Residential	3	4	6	51	70		
314	Residential	3	4	8	72	117		
315	Residential	3	4	8	72	117		
316	Residential	3	4	19	72	302		
317	Residential	3	4	15	80	230		
318	Residential	3	4	12	92	172		
319	Residential	3	4	12	92	172		
320	Residential	3	4	6	92	92		
321	Residential	3	4	4	62	62		
322	Residential	3	4	4	62	62		
SUB TOTAL					1178	1955		

EXHIBIT C
PRESERVE PARTNERS
PROGRAM TABLE
Page 3 of 4

Building Number	Type/Use	Building Height (No. of stories) (1)			Preliminary Number of Units		Note
		3	4	Var.	2800	5000	
PHASE IV							
401	Residential	3	4	13	92	216	(2)
402	Residential	3	4	16	92	270	(2)
403	Residential	3	4	19	92	324	
404	Residential	3	4	22	92	372	
405	Residential	3	4	25	92	421	
406	Residential	3	4	22	92	372	
407	Residential	3	3	3	16	16	
408	Residential	3	3	3	8	8	(2)
409	Residential	3	3	3	16	16	(2)
410	Residential	3	3	3	16	16	(2)
411	Residential	3	3	3	16	16	(2)
SUB TOTAL					**624**	**2047**	
Grand Total					**2,800**	**5000**	
PP01	Entry/Lake Edge Park						202,650 SF
							4.65 acres
PP02	Community Park						1,142,120 SF
							26.22 acres
PP03 (3)	Town Commons						60,275 SF
							1.38 acres
	Total Parks						1,405,045 SF
							32.26 acres
C-1	Sales Office, Restaurant, Retail						Temporary
C-1A	Future Hotel						150 room
	Conference Center						15,000SF
C-2 (3)	Town Center Retail/Office						20,000
C-3 (3)	Town Center Club, Spa						TBD

(1) Final heights to be determined at the time of each site plan approval.
(2) These buildings may be built as part of Phase I at the developer's option
(3) These parcels may be built as part of any Phase

Developer's present intention is to develop the mix of residential, retail and hotel uses, of approximately 2,800 residential units with other mixed uses . However, the Concept Plan and the Program Table, Exhibit C, also indicate potential future development that may exceed the densities and intensities noted above . Both parties recognize and agree that certain increases in the above-noted densities and intensities of proposed development may require further review under the provisions of Chapter 380, Florida Statutes, prior to final approval of such modified intensities and densities. Nothing contained herein should be construed as City's final approval of any development that would require such review, without compliance with the applicable requirements of Chapter 380, Florida Statutes.



THE PRESERVE
at
NORTH MIAMI

THE SWERDLOW PRESERVE PARTNERS

Exhibit C
Combat Sports
National Training
Center / Library
Community Project
Page 4 of 4

80

100' 200'

Exhibit D
Charter School Site Legal Description

Commence at the Southwest corner of Section 15, Township 52 South, Range 42 East, run N 02° 35' 47" W along the west line of said Section 15 for a distance of 110.00 feet to the POINT OF BEGINNING of the parcel hereinafter to be described as follows: thence continue N 02° 35' 47" W along the last described line, for a distance of 758.53 feet to point, thence run N 87° 27' 48" E for a distance of 250 feet to point, thence run S 02° 35' 47" E for a distance of 758.53 feet to point, thence run S 87° 27' 48" W for a distance of 250 feet to point the POINT OF BEGINNING.

The described parcel is approximately 4.35 acres in area. It is that area east of the 60' ROW into the North Dade Treatment Plant.

Exhibit E
Olympic Venue/ Library Site Legal Description

Lots 13 through 19 of Block 26 and Lots 1 through 27 of Block 27, Irons Manor 2nd Addition as recorded in PB 17 page 39 in the public records of Miami- Dade County.

Exhibit "F"
Development Approvals

Amendment to City's "PU-PUD" (Public Use-Planned Unit Development) and/or "PU" (Public Use) Ordinance to permit proposed uses; or

Amendment to the City's Comprehensive Development Master Plan, including an amendment to the Future Land Use Plan Map allowing the proposed uses, if required, as part of the text of the Comprehensive Plan and designating the Property on the Future Land Use Plan Map as "PUD" (Planned Unit Development");

Amendment to the City's Zoning Ordinance to change the district boundary designation of the Property presently zoned as "PU" (Public Use") to either "PU-PUD" or "PUD" in order to develop the Project and if required.

Amendment to the City's Comprehensive Development Master Plan, if required, in order to create a Transportation Concurrency Exception Area ("TCEA"), pursuant to the requirements of Rule 9J-5.0055(6), F.A.C., in order to assure traffic concurrency compliance for the Project;

Approval of a Concept Plan for the Project under the applicable provisions of the City Code;

Approval of a Site Plan for Phase I of the Project under the applicable provisions of the City Code.

If required by the Concept Plan, as it may be modified in the future, approval of an application for Development of Regional Impact ("DRI") including the issuance of a Development Order for the DRI by City resolution; or

If requested by Developer, the City shall cooperate to seek approval of a "binding letter of interpretation" that the proposed project is not a DRI;

Required platting and subdivision approvals by the City and Miami-Dade County and recordation of any required plats;

Approval of any required street and alley vacations, if not accomplished by platting or subdivision;

Approval by Miami-Dade County of the sale or transfer of the property to Developer pursuant to Section 2-11.2 of the Miami-Dade County Code, if required;

All required approvals from the Miami-Dade County Development Impact Committee and the Board of County Commissioners for a Development of County Impact ("DCI"), as pursuant to Section 33A-2 of the Miami-Dade County Code, if required, or;

If requested by Developer, the City shall cooperate to seek approval of a "binding letter of interpretation" that the proposed project is not a DCI, if reasonably possible, in the opinion of the Developmental Impact Committee of Miami-Dade County;

All required exemptions, "No Need to Comply Determinations" or required approvals from the Miami-Dade County Shoreline Review Committee or the Developmental Impact Committee;

All required permits or permit modifications from the Miami-Dade County Department of Environmental Resources Management ("DERM");

Approval by DERM of landfill closure plan as required by that certain Consent Agreement between DERM and the City, as may be amended;

All required contracts, allocations, approvals or permits from the City of North Miami and/or Miami-Dade County Water and Sewer Department for water and sewer facilities;

All approvals required subject to the settlement agreement between the Florida Department of Environmental Protection ("DEP") and Miami-County dated July 27, 1993, the First Amendment to the Settlement Agreement between DEP and the County dated December 21, 1995, the First Partial Consent Decree and the Second and Final Partial Consent Decree entered in the United States of America Environmental Protection Agency vs. Metropolitan Dade County (Case Number 93-1109 CIV-MORENO);

All approvals from DERM, the South Florida Water Management District, Florida Department of Environmental Protection, and the Environmental Protection Agency, as required, with respect to the surface water management system for the proposed development, as required;

All required permits from the State of Florida Department of Environmental Protection, including, without limitation, landfill closure permit;

All required approvals permitting the use of any lands considered by the State of Florida to be sovereign or submerged lands and as required for implementation of the Project;

All approvals from the Federal Aviation Authority with respect to the height of buildings in the proposed development, if required;

All required permits from the United States Army Corps of Engineers under Section 10 of the Rivers & Harbors Act, Section 404 of the Clean Water Act and/or Section 103 of the Marine Protection, Research and Sanctuaries Act;

All required permits or approvals with respect to any plant or animal species on the property which may be listed as endangered or threatened species by the U.S. Fish and Wildlife Service in order to comply with the Federal Endangered Species Act, or the Florida Endangered and Threatened Species Act;

All required permits and approvals, including, without limitation, a building permit issued by the City of North Miami, to commence construction of the first residential condominium building within the Project, without in any way limiting the police powers of the City; and

Such other approvals, consents, permits, and amendments as may be required by law.

Exhibit "G"
Development Approval Schedule[1]

90 days from date of Agreement:

City-Council consideration of proposed Amendment to City's "PU-PUD" (Public Use-Planned Unit Development) Ordinance to permit proposed uses;

City-Application to Miami-Dade County for approval of the Agreement the sale or transfer of the Property to Developer, pursuant to Section 2-11.2 of the Miami-Dade County Code;

City-Consideration of text changes to City Comprehensive Plan to designate the Property as a Regional Activity Center ("RAC") and to create a Traffic Concurrency Exception Area, pursuant ("TCEA"), pursuant to the requirements of Rule 9J-5.0055(6), F.A.C., in order to assure traffic concurrency compliance for the Project;

Developer-if required, file application to rezone those portions of the Property presently zoned "PU" to either "PU-PUD" or to "PUD", as required by law and the Comprehensive Plan;

Developer-Application for a Concept Plan approval for the Project under the applicable provisions of the City Code;

Developer-Submission of request for exemption or "No Need to Comply Determination"from the Miami-Dade County Shoreline Review Committee or the Developmental Impact Committee;

City-Planning Board and City Council consideration of Concept Plan;

Developer-Application for approval from the Miami-Dade County Development Impact Committee and the Board of County Commissioners for a Development of County Impact ("DCI"), as pursuant to Section 33A-2 of the Miami-Dade County Code, if required, or;

Developer-Application for a "binding letter of interpretation" that the proposed project is not a DCI, if reasonably possible, in the opinion of the Developmental Impact Committee of Miami-Dade County;

120 days from date of Agreement:

[1] The parties recognize and agree, that certain approvals are in the jurisdiction of governmental agencies other than the City. As a result, this Development Approval Schedule does not address the timing of consideration of such approvals. However, certain time-frames hereunder are dependent upon such actions being taken in a timely manner. As such, the parties recognize and agree that this Schedule is tentative and subject to modification as needed as a result of any such delays.

Developer-If required, application to amend the City's Comprehensive Development Master Plan, including an amendment to the Future Land Use Plan Map allowing the proposed uses, if required, as part of the text of the Comprehensive Plan and designating the Property on the Future Land Use Plan Map as "PUD" (Planned Unit Development");

Developer-Application for of a Site Plan approval for Phase I of the Project under the applicable provisions of the City Code;

Developer-Application for platting or replatting of the Property and street and alleyway vacation;

Developer-Application for creation of Community Development District;

Developer-Application for all required contracts, allocations, approvals or permits from the City of North Miami and/or Miami-Dade County Water and Sewer Department for water and sewer facilities;

Developer-Application for all required approvals by DERM for connection to the sanitary sewer system, pursuant to that certain "First Partial Consent Decree and the Second Partial Consent Decree entered in United States of America Environmental Protection Agency v. Metropolitan Dace County (Case Number 93-1109 CIV - Moreno)";

180 days from date of Agreement:

Developer-If no Shoreline Review exemption is granted or it is determined that the Project does need to comply with review by the Shoreline Review Committee, application filed for Shoreline Review Committee approval;

City-If required, City Planning Board consideration of application to amend the City's Comprehensive Development Master Plan, including an amendment to the Future Land Use Plan Map allowing the proposed uses, if required, as part of the text of the Comprehensive Plan and designating the Property on the Future Land Use Plan Map as "PUD" (Planned Unit Development");

City-Planning Board consideration of application for of a site plan approval for Phase I of the Project under the applicable provisions of the City Code;

210 days from date of Agreement:

City-If required, City Council consideration of application to amend the City's Comprehensive Development Master Plan, including an amendment to the Future Land Use Plan Map allowing the proposed uses, if required, as part of the text of the

Comprehensive Plan and designating the Property on the Future Land Use Plan Map as "PUD" (Planned Unit Development");

City- Council consideration of application for creation of Community Development District;

City- Council consideration of application for of a site plan approval for Phase I of the Project under the applicable provisions of the City Code;

City- Council consideration of application for platting or replatting of the Property and/or street and alley closure application;

Developer-Application for closure plan approval by FDEP and DERM;

Developer-Application for all required permits or permit modifications from the Miami-Dade County Department of Environmental Resources Management ("DERM"); South Florida Water Management District and Florida Department of Environmental Protection;

Developer-Applications to DERM, the South Florida Water Management District, Florida Department of Environmental Protection, and the Environmental Protection Agency, as required, with respect to the surface water management system for the proposed development, as required;

Developer-If required, application for all required approvals permitting the use of lands considered by the State of Florida to be sovereign or submerged lands and as required for implementation of the Project;

Developer-If required, application for approvals from the Federal Aviation Authority with respect to the height of buildings in the proposed development;

Developer-Applications for required permits from the United States Army Corps of Engineers under Section 10 of the Rivers & Harbors Act, Section 404 of the Clean Water Act and/or Section 103 of the Marine Protection, Research and Sanctuaries Act;

Developer-Applications for required permits or approvals with respect to any plant or animal species on the property which may be listed as endangered or threatened species by the U.S. Fish and Wildlife Service in order to comply with the Federal Endangered Species Act, or the Florida Endangered and Threatened Species Act; and

<u>18 months from date of Agreement</u>:

All required approvals.

CONSENT AGREEMENT
BETWEEN
MIAMI-DADE COUNTY
DEPARTMENT OF ENVIRONMENTAL RESOURCES MANAGEMENT
AND
CITY OF NORTH MIAMI

This Agreement, entered into voluntarily by and between MIAMI-DADE COUNTY DEPARTMENT OF ENVIRONMENTAL RESOURCES MANAGEMENT (DERM) and the CITY OF NORTH MIAMI (City), pursuant to Section 24-5 (15) (c), Miami-Dade County Environmental Protection Ordinance, shall serve to redress alleged violations of Chapter 24 of the Code of Miami-Dade County and to address other environmental matters at the Munisport Landfill Site.

DERM and the City agree to the following statement of facts:

FINDINGS OF FACT

1. DERM is an agency of Miami-Dade County, a political subdivision of the State of Florida, which is empowered to control and prohibit pollution and protect the environment within Miami-Dade County pursuant to Article VIII, Section 6 of the Florida Constitution, the Miami-Dade County Home Rule Charter and Section 403.182 of the Florida Statutes.
2. The City is a municipal corporation of the State of Florida, which is empowered pursuant to the constitutional home rule provisions of Article VIII, Section 2 of the Florida Constitution, and has the duty pursuant to Article II, Section 7, to conserve and protect its natural resources.
3. The City is the owner of a site that was formerly operated as a landfill, approximately 170 acres in size, commonly known as the Munisport Landfill Site, and which is located in the City of North Miami. The legal description of the landfill is attached to this Agreement as Exhibit A.
4. A State of Florida Mangrove Preserve and Biscayne Bay, an Outstanding Florida Water, are located adjacent to the Munisport Landfill Site to the east and south.

5. Investigations conducted by DERM at, and adjacent to, the landfill revealed ammonia concentrations in the groundwater and surface waters in excess of the water quality standards contained in Chapter 24, Miami-Dade County Environmental Protection Ordinance and State of Florida water quality standards.

6. The ammonia levels in the groundwater at the landfill may have an adverse effect on the altered wetlands, the mangrove preserve and on the bay.

7. The City has a legal responsibility, as the owner of the property, to properly close the landfill, to prevent contaminated groundwater discharging from the landfill from having an unacceptable adverse effect on the mangrove preserve and on Biscayne Bay, to remediate contaminated groundwater and surface water, to restore and maintain the wetlands adjacent to the landfill which were altered by landfill operations, as delineated in Exhibit B, and to breach the dike, between the mangrove preserve and the altered wetlands located north and west of the mangrove preserve, at an appropriate time.

8. The City has undertaken actions to investigate, assess, model and prepare for containing, treating and disposing the contaminated groundwater pursuant to a Record of Decision entered by the United States Environmental Protection Agency, including, but not limited to, installation of monitoring wells, collection and analysis of numerous soil, groundwater and surface water samples, performing aquifer testing, performing bioremediation treatability studies and installing a series of vertical and horizontal wells at the Munisport Landfill Site to act as an hydraulic barrier.

9. The selection, design and implementation of an effective hydraulic barrier to limit the migration of contaminated groundwater from the landfill to the mangrove preserve and to Biscayne Bay is integral to the final design of a groundwater treatment remedial system. The design and implementation of an hydraulic barrier is necessary in order to develop plans for the following tasks contemplated by this Agreement:

- landfill closure
- breaching the dike

A map depicting the locations of the former Munisport Landfill Site, directly impacted wetlands, dike, mangrove preserve, mangrove mitigation area and Biscayne Bay is attached to this Agreement as Exhibit B.

10. The Florida Department of Environmental Protection has designated DERM as the lead agency in regulating the City's work on a pilot study for an hydraulic barrier. DERM has requested FDEP to delegate Remedial Action Plan (RAP) review/implementation and landfill closure authority to DERM and the parties reasonably believe that FDEP will delegate to DERM the authority to act as the lead agency.

11. In an effort to insure the continued protection of the health and safety of the public and the environment of Dade County, to insure compliance with Chapter 24, Miami-Dade County Environmental Protection Ordinance, and to avoid time-consuming and costly litigation, and to avoid the possibility of inconsistent remedies and actions, DERM and the City stipulate and agree to the following, and it is ordered:

WORK SUBMITTAL AND REPORTING REQUIREMENTS

The Pilot Study Plan

12. The City shall continue to plan, model, test and evaluate negative head and positive/negative head hydraulic barrier systems designed to intercept and contain ammonia contaminated groundwater at the southern and eastern edges of the landfill. The City shall submit a Pilot Study Plan on or before the effective date of this Agreement, along with applicable review fees. The objective of the plan will be to implement an aquifer performance stress test to collect data under both negative-only and positive-negative pumping conditions in prescribed segments of the existing horizontal interception trench and vertical recovery wells. The Pilot Study Plan includes specific performance parameters for evaluating the effectiveness of the negative head and the positive/negative head systems as an hydraulic barrier and containment system. The parameters include, without limitation:

a. Aquifer parameters;

b. Trench sections to be tested;

c. Draw-down;

d. Mounding;

e. Radii of influence;

f. Equipotential flow lines;

g. Placement of performance data monitoring points;

h. Preliminary design configurations of the hydraulic barrier;

i. Pumping and injection rates and locations;

j. Methods for accounting for tidal effects and variations in the hydraulic gradient;

k. Data acquisition and quality assurance protocols; and,

l. Pilot test limitations.

The City shall propose and DERM shall review performance parameters and performance goals as part of the Pilot Study Plan review process.

13. DERM shall review the Pilot Study Plan referred to in paragraph 12 of this Agreement and, within 30 days, shall approve, approve with modifications, or disapprove the plan. The Pilot Study Report

14. Upon receipt of DERM's approval, the City shall implement the plan and submit a Pilot Study Report to DERM, along with applicable review fees, within 60 days of plan approval. The Pilot Study Report shall address Draft Design Report comments 3, 4, 5, 6, and 8 contained in DERM's February 5, 1997 correspondence (Exhibit C). In order to receive approval of an hydraulic barrier system, the City must demonstrate to DERM that the results of the Pilot Study meet the performance goals contained in the approved Pilot Study Plan.

15. DERM shall review the Pilot Study Report submitted pursuant to paragraph 14 of this Agreement and, within 30 days, shall approve, approve with modifications, or disapprove the report.

16. In the event both the negative head and the positive/negative head hydraulic systems meet the DERM-approved performance goals, the City shall consider, and give substantial weight to, operating, maintenance, reliability and cost factors, among others, which it shall decide, in selecting a barrier system. The City reserves the right to propose any alternative system for containing the migration of contaminated groundwater if the City determines, and DERM agrees, that an alternative system would adequately contain the movement of the contaminated groundwater at a lower cost to the City. DERM may consider cost, time and effectiveness in its evaluation of the City's proposal.

The Treatment Design Report

17. The City shall, within 120 days from the effective date of this Agreement, submit to DERM a Treatment Design Report, along with applicable review fees. The Treatment Design Report shall include a 50% design for the modules for the biological treatment process with the appropriate engineering support calculations, and address Draft Design Report comments 2 and 7 and effluent disposal comments 1-4 from DERM's February 5, 1997, correspondence (Exhibit C), as applicable.

18. In order to receive approval for the Treatment Design Report the City must demonstrate that the design will achieve the required degree of treatment.

19. DERM shall review the Treatment Design Report submitted pursuant to paragraph 17 of this Agreement and, within 45 days approve, approve with modifications, or disapprove the report.

The Remedial Action Plan

20. The City shall, within 90 days from the date DERM approves the Treatment Design Report, submit to DERM a RAP. However, the RAP submittal will be deferred for a period not to exceed 90 days after DERM receives lead agency status from FDEP for the review and implementation of the RAP. The RAP shall incorporate results from the Pilot Study Report and the Treatment Design Report. All necessary engineering support calculations and cost benefit analyses shall be included. The RAP shall include an approximate cost estimate, appropriate plan review fee and a timetable for implementation.

21. The City shall, within 20 days of submittal of the RAP, publish notice for a public meeting on the proposed RAP. DERM shall conduct a public meeting to receive public comment on the proposed RAP within 30 days of submittal at a convenient time and location in the area of the Munisport Landfill Site.

22. DERM shall review the RAP submitted pursuant to paragraph 20 of this Agreement and, within 60 days, approve, approve with modifications, or disapprove the RAP. DERM shall consider any comments received at the public meeting that are related to the proposed RAP. Upon receipt of DERM's approval of the RAP, the City shall implement and complete the RAP in accordance with the approved time schedule and paragraph 55 of this Agreement.

23. The time schedule established for implementing the RAP will provide for sufficient time for compliance with procurement laws and procedures.

24. The City shall submit to DERM a progress report within one month of receipt of approval for the RAP and thereafter every month until system start-up.

25. The City shall, within 60 days after completion of the RAP implementation, submit to DERM record drawings ("as-built" drawings) of the remedial action system.

26. The City shall, within four hours of discovery, notify DERM of any malfunctions or breakdowns of any equipment or processes which are part of the remedial system. The City shall immediately commence correction of the malfunction or breakdown and use its best efforts to complete the corrective actions of any problem. At such time as the problem has been corrected, the City shall submit to DERM certification that the system is working properly.

27. The City shall, prior to making any modifications or changes of the remedial system, submit to DERM a written request to modify the system, setting forth specific details of the proposed modifications, along with applicable review fees. DERM shall review the proposed modifications or changes and, within 30 days, shall approve, approve with modifications, or disapprove the modifications or changes. Modifications shall not include normal maintenance activities or minor modifications to the system, as

part of maintaining the system, or corrective measures implemented pursuant to paragraph 26, including, but not limited to, the replacement of pumps and valves, which do not negatively affect the performance of the system.

Water Quality Monitoring Plan

28. The City shall conduct water monitoring to collect data to be used in establishing the effectiveness of the remedial system.

29. The City shall, within 60 days of the effective date of this Agreement, submit to DERM a baseline Water Quality Monitoring Plan.

30. In order to assist the City in preparing and implementing a water quality monitoring plan, DERM shall make available to the City all groundwater and surface water baseline data it possesses from any source, including, but not limited to:

a. Water quality data (including ammonia concentrations);

b. Associated rainfall data;

c. Pollutant loading by point and non-point source discharges; and

d. Any reports or conclusions interpreting the data.

31. DERM shall review the surface water and groundwater quality monitoring plan submitted by the City and, within 30 days, approve, approve with modifications, or disapprove the plan. Upon receipt of DERM's approval, the City shall implement the monitoring plan in accordance with the schedule contained in the plan.

32. The City shall, within 45 days of the effective date of this Agreement, remove the culverts connecting the mangrove mitigation area to the Mangrove Preserve and restore the dike in those areas by backfilling with acceptable material.

Wetlands Mitigation Plan

33. The City shall, within nine months of the effective date of this Agreement, submit to DERM a Wetlands Mitigation Plan to restore and maintain wetlands that are located immediately adjacent to, and were directly impacted by, operations at the Munisport Landfill Site, as well as an additional 0.9 acre site of wetlands creation or restoration which is required by DERM to complete mitigation associated with service road construction. DERM shall review the Wetlands Mitigation Plan submitted by the City and, within 30 days, approve, approve with modifications, or disapprove the plan. Upon receipt of DERM's approval, the City shall implement the plan in accordance with the schedule contained in the plan. The schedule shall provide for adequate sequencing to be consistent with and not in conflict with RAP implementation. The removal of exotic vegetation and any necessary fill on the eastern toe of the slope of the landfill upland area will be coordinated with RAP implementation. An 80% survivorship rate shall be maintained in the mitigation areas. DERM shall grant credit for plants of the species required as mitigation that recruit into mitigation areas. The City shall submit semiannual written monitoring reports to DERM on the success or failure of the mitigation areas. The first monitoring report shall be due 120 days from the effective date of this Agreement and every six months thereafter, until DERM determines the mitigation has become established and is successful.

Wetlands Mitigation Bank

34. The parties recognize that the City intends to create a wetlands mitigation bank to provide for restoration and maintenance of wetlands that were not directly impacted by operations at the Munisport Landfill Site, and to receive credit for mitigation work that it voluntarily performs and that the provisions of paragraph 35 are voluntarily entered into by the City to secure the benefit to the public of multiple useful public purposes.

35. In further pursuit of the City's desire to create a wetlands mitigation bank, the City agrees to submit to DERM and to other relevant government agencies a Wetland Mitigation Bank proposal for all wetlands

which are situated at and adjacent to the Munisport Landfill Site that are located south of NE 151 Street, north of NE 135 Street and east of the landfill, that are owned by the City on the effective date of this Agreement as depicted in Exhibit B and that are not subject to paragraph 33 of this Agreement. The City voluntarily agrees to submit a complete application to the appropriate agencies for a mitigation bank in a timely manner not to exceed one year from the effective date of this Agreement. The City agrees to respond to all requests for information to process the required applications in a timely manner. The City agrees to implement the mitigation bank within one year of the issuance of the mitigation bank permit. In the event the City is unable to obtain the permits required for the mitigation bank area, or any portion thereof, then the City, without cost or liability to the City, agrees to allow DERM, through its employees, agents, contractors or permittees of DERM-approved mitigation projects, to undertake a program to eradicate exotic plants within City-owned wetlands at the Munisport Landfill Site that are not within the permitted area of the wetland mitigation bank.

The County agrees to indemnify and hold harmless the City from any and all claims, liability and actions arising out of its employees', agents' or contractors' performance of the program to eradicate exotic plants, to the extent allowable by law. Moreover, any DERM contractor or permittee of a DERM-approved mitigation project will be required to indemnify and hold harmless the City from any and all claims, liability and actions arising out of the contractor's or permittee's performance of the program to eradicate exotic plants, to the extent allowable by law. DERM, its employees, agents, contractors or permittees shall not encumber the land to which this paragraph applies.

Action on Disapproval of Plans

36. If DERM disapproves the City's plans or reports the City shall schedule and meet with DERM within 14 days to discuss those items which resulted in the disapproval and modify the plans or reports to satisfy the requirements of this Agreement. The City shall submit an acceptable plan, report, or proposal within the time period agreed upon at the meeting between the parties. The City's failure to

submit an acceptable plan, report, or proposal within the prescribed time period may result in enforcement action by DERM.

Environmental Permits

37. The City shall apply for and obtain all required environmental permits for any work in, on, over, or upon tidal waters or wetlands on or adjacent to the subject site prior to the commencement of the work. The City shall use its best professional efforts to submit complete applications for environmental permits and to respond to requests by the issuing governmental agency for additional data and plan modifications. Any delays in securing environmental permits that are not within the City's control shall not constitute a violation of the requirements of this Agreement and shall extend the time period in which the City is required to perform a work task.

SAFETY PRECAUTIONS

38. The City shall maintain the site, during the term of this Agreement, in a manner which shall not pose a hazard or threat to the public at large or the environment and shall not cause a nuisance or sanitary nuisance as set forth in Chapter 24, Miami-Dade County Environmental Protection Ordinance.

VIOLATION OF REQUIREMENTS

39. This Agreement constitutes a lawful order of the Director of the Department of Environmental Resources Management and is enforceable in a civil court of competent jurisdiction pursuant to the provisions of the Miami-Dade County Environmental Protection Ordinance. Violation of any requirement of this Agreement may result in enforcement action by DERM. Each violation of any of the terms and conditions of this Agreement by the City shall constitute a separate offense.

PENALTIES

40. In the event the City fails to submit, implement or complete those items listed in paragraphs 12, 14, 17, 20, 21, 22 and 27 thru 29, 32, and 35 herein, and provided such failure is due solely to the fault of the City, the City shall pay the DERM a civil penalty of up to $500.00 per day for each day of non-

compliance and the City shall be subject to enforcement action in a civil court of competent jurisdiction for such failure pursuant to the provisions set forth in Chapter 24, Miami-Dade County Environmental Protection Ordinance. Said payment shall be made by the City to DERM within ten days of receipt of written notification.

DISPUTE RESOLUTION

41. All disputes arising under this Agreement including the interpretation of timetables, application of provisions of this Agreement, implementation requirements of this Agreement, or technical or scientific disputes over interpretation of data, which may arise throughout the term of this Agreement, shall be resolved as follows:

a. All disputes shall initially be the subject of informal communication between the parties. Either party may invoke the dispute clause by asserting, in writing, that a dispute exists by describing the nature of the dispute or disagreement. Within seven days from such assertion, the parties shall meet for as long as and as many times as, necessary to resolve the dispute. The informal dispute resolution period shall not exceed 14 calendar days. The results of the informal dispute resolution, if successful, shall be reduced to writing, signed by both parties and shall be binding and enforceable and shall become a part of this Agreement.

b. Any dispute which remains unresolved following the process set forth in subparagraph a shall be heard by the Mediation Division of the Circuit Court in and for Miami-Dade County, Florida. Either party may petition the Mediation Division for a hearing on the disputed issue(s). The results of any mediation, if successful, shall be reduced to writing, signed by both parties and the mediator and shall be binding and enforceable and shall become part of this Agreement.

c. Any dispute which remains unresolved following the process set forth in subparagraphs a and b shall be heard by the Court. Either party may petition the Court to resolve the issue(s) in dispute.

d. Each party shall bear its own costs for dispute resolution regardless of the outcome.

e. The time for performance of any disputed action shall be tolled and any penalties levied under paragraph 40 shall not accrue during the pendency of the resolution of any dispute under this paragraph.

GENERAL PROVISIONS

42. Upon delegation of landfill closure authority by FDEP to DERM, a landfill closure plan will be required to be submitted to DERM within 180 days from RAP implementation. The closure plan will be designed in accordance with applicable Florida Administrative Code rules, when the hydraulic barrier or constructed containment alternative is operational. The effectiveness of the hydraulic barrier shall be considered in the review of the landfill closure plan.

43. The City shall not remove the dike separating the altered wetlands/mitigation area from the mangrove preserve until the hydraulic barrier system is installed and DERM determines that it is effective. The City shall submit to DERM a plan for breaching the dike within 60 days after DERM's determination that the hydraulic barrier is effective. The objectives of the plan shall be to restore tidal influences and other beneficial biological and chemical relations between the wetland and the mangrove preserve. The plan shall provide for surface water quality testing and assurance that breaching the dike will not establish a pathway for conveying contaminants. The plan may provide for partial removal of the dike and use of the structure for environmental education, or other appropriate public recreational or educational use. Dike removal must be compatible with approved plans for the landfill closure and storm water management (not part of this Agreement). In the event that the hydraulic barrier is not installed or determined to be effective within 4 years after the effective date of this Agreement, the dike

shall be breached or removed by the City, in accordance with plans approved by DERM, and providing that the work is performed pursuant to a Class I Permit issued by DERM. In order to ensure the timely implementation of the dike work, a complete Class I permit application and plans shall be submitted to DERM within three years after the effective date of this Agreement.

44. This Agreement may be amended to provide for landfill closure, coordination with storm water management, wetlands management and re-use of the property.

45. The City shall abate the surface water quality impacts in a manner acceptable to DERM if the hydraulic barrier is not installed in a timely manner or if the monitoring reports reveal continuing violations of county, state, or federal standards pertaining to contamination in the groundwater and surface water emanating from the Munisport Landfill Site beyond the hydraulic barrier after the system has been operating for 12 months.

46. The City shall not permit uses of the Munisport Landfill Site which may negatively impact upon the groundwater hydraulic barrier system, the landfill closure, and protection of the wetlands in the adjacent area of Biscayne Bay and mangrove preserve.

47. Any contaminants which may be discovered through monitoring or other means shall be evaluated at the time of discovery for the purpose of determining if any remediation will be necessary.

48. The City shall allow authorized representatives of DERM access to the property at reasonable times for purposes of determining compliance with this Agreement and the rules and regulations set forth in Chapter 24, Miami-Dade County Environmental Protection Ordinance.

49. DERM expressly reserves the right to initiate appropriate legal action to prevent or prohibit the future violations of applicable statutes or the rules.

50. This Agreement does not relieve the City of the responsibility to comply with applicable federal, state or local laws, regulations and ordinances.

51. Where timetables or conditions cannot be met by the City due to circumstances beyond the City's control, the City shall provide written documentation to DERM, which shall substantiate that the cause(s) for the delay or non-compliance was not reasonably in the control of the City. Upon receipt of written notice, DERM shall provide the City with a reasonable period of time for meeting the time tables and conditions previously agreed to by the parties.

52. In every instance under this Agreement where DERM is unable to act within a prescribed time period, DERM shall promptly notify the City of the date on which it will provide action.

53. This Agreement shall neither be evidence of a prior violation of Chapter 24 of the Miami-Dade County Code nor shall it be deemed to impose any limitation upon any investigation or action by DERM in the enforcement of Chapter 24.

54. In consideration of the complete and timely performance by the City of the obligations contained in this Agreement, DERM waives its rights to seek judicial imposition of damages or criminal or civil penalties for the matters alleged in this Agreement.

55. The term of this Agreement shall be in effect until such time as the City has complied with all requirements contained herein. However, the RAP implementation in paragraph 22 will be deferred until such time that the City/US EPA Consent Decree entered into in September 1991 and approved by the U.S. District Court on March 23, 1992 is amended to approve the ROD amendment of September 5, 1997, and the action in United States of America v. North Miami, Case No. 91-2834 (S.D. FLA) (CIV-MARCUS) is dismissed.

56. This Agreement shall become effective upon the date of execution by the Director, Miami-Dade County Department of Environmental Resources Management.

1/30/98
Date:

Lee R. Feldman, City Manager
City of North Miami, Florida

Before me, the undersigned authority, personally appeared _____, who after being duly sworn, deposes and says that he or she has read and agreed to the foregoing.

Subscribed and sworn to before me this 30 day of January, 1998, by _____
(name of affiant)

Personally Known ✓ or Produced Identification _____ (Check one).

Type of Identification Produced: _____

OFFICIAL NOTARY SEAL
BARBARA SUE JORGENSON
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC387727
MY COMMISSION EXP. JUNE 27,1998

Barbara Jorgenson
Notary Public

2-10-98
Date

John W. Renfrow, P.E., Director, Miami-Dade County, Department of Environmental Resources Management

Witness

Witness

EXHIBIT A
ATTACHMENT A

LEGAL DESCRIPTION

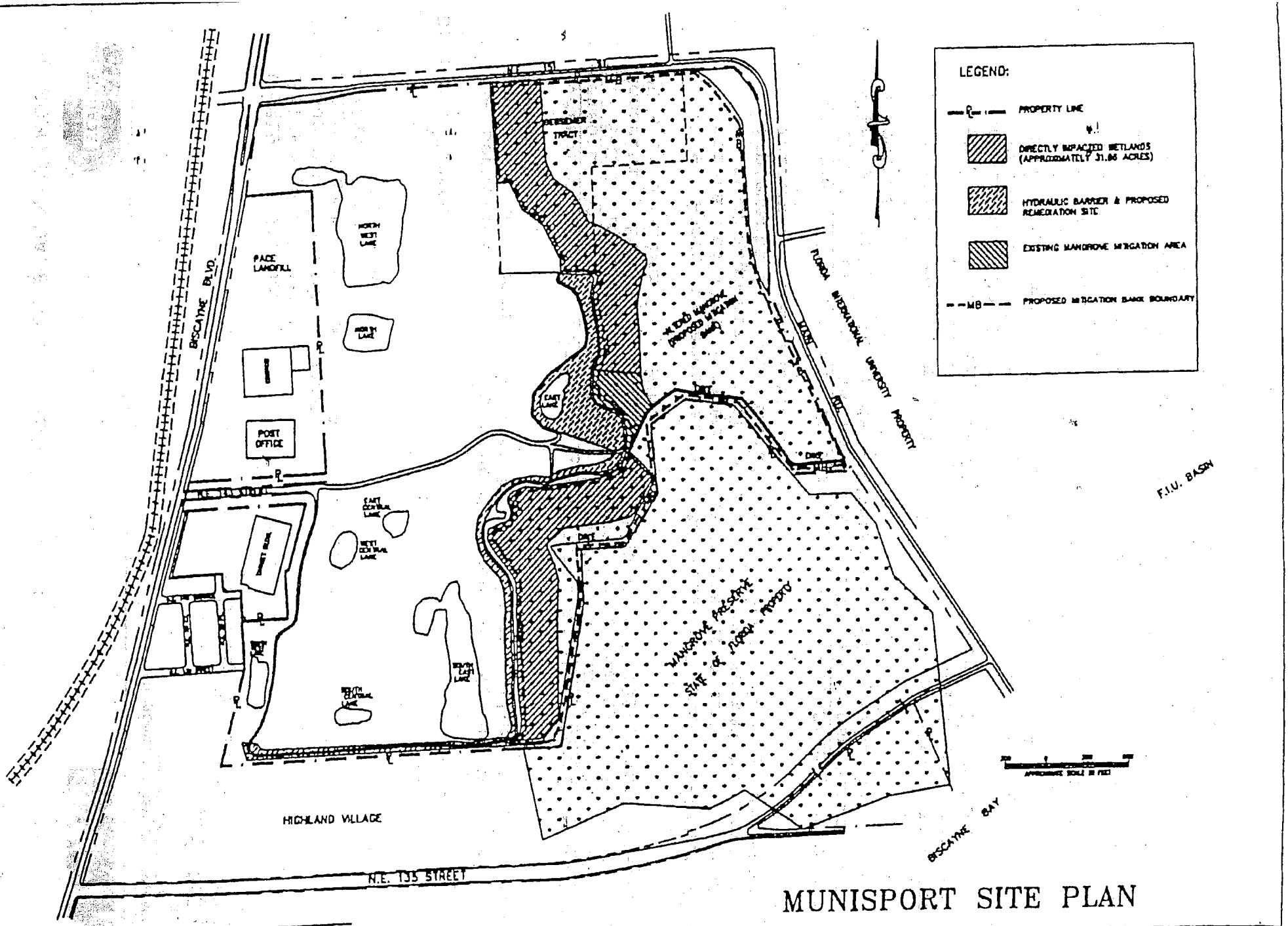
A TRACT OF LAND LYING IN A PORTION OF SECTIONS 21 AND 22, OF TOWNSHIP 52 SOUTH, RANGE 42 EAST, OF DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF SAID SECTION 22, THENCE RUN S02°37'49"E FOR 661.87 FEET, ALONG THE WEST LINE OF THE NW 1/4 OF SAID SECTION 22; THENCE RUN S87°31'05"W FOR 662.94 FEET; THENCE RUN S02°36'23"E FOR 661.24 FEET; THENCE RUN S87°34'22"W, ALONG THE SOUTH LINE OF THE NE 1/4 OF THE NE 1/4 OF SAID SECTION 21, FOR 663.22 FEET TO THE SOUTHWEST CORNER OF NE 1/4, NE 1/4 OF SAID SECTION 21; THENCE RUN N02°34'56"W, ALONG THE WEST LINE OF THE NE 1/4, NE 1/4 OF SAID SECTION 21, FOR 1321.21 FEET TO THE NORTHWEST CORNER OF SAME; THENCE RUN S87°27'43"W, ALONG THE NORTH LINE OF THE NE 1/4 OF SAID SECTION 21, FOR 890.36 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE TO THE LEFT; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CIRCULAR CURVE, CONCAVE TO THE SOUTHEAST AND HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF 08°04'49", A RADIUS OF 1070.92 FEET, FOR AN ARC DISTANCE OF 151.03 FEET TO THE POINT OF TANGENCY; THENCE RUN S79°22'54"W FOR 200.00 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE TO THE RIGHT; THENCE RUN WESTERLY ALONG THE ARC OF SAID CIRCULAR CURVE, CONCAVE TO THE NORTHWEST AND HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF 07°26'39", A RADIUS OF 1220.92 FEET, FOR AN ARC DISTANCE OF 158.63 FEET TO THE POINT OF TANGENCY; THENCE RUN S86°49'33"W FOR 252.60 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE TO THE LEFT; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CIRCULAR CURVE, CONCAVE TO THE SOUTHEAST AND HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF 78°17'28", A RADIUS OF 35.00 FEET, FOR AN ARC DISTANCE OF 47.83 FEET TO THE POINT OF TANGENCY; THENCE RUN S08°32'05"W, ALONG THE EASTERLY RIGHT-OF-WAY LINE OF BISCAYNE BOULEVARD, FOR 592.03 FEET; THENCE RUN N87°01'53"E FOR 472.08 FEET TO THE NORTHWEST CORNER OF LOT 3 OF "AMENDED PLAT OF R.E. McDONALD'S SUBDIVISION", AS RECORDED IN PLAT BOOK 2 AT PAGE 22 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA; THENCE RUN S02°32'03"E, ALONG THE WEST LINE OF LOTS 3, 6 AND 7, OF LAST DESCRIBED PLAT, FOR 1978.05 FEET TO THE SOUTHWEST CORNER OF SAID LOT 7; THENCE RUN S87°37'49"W FOR 984.17 FEET TO THE EASTERLY R/W LINE OF BISCAYNE BOULEVARD; THENCE RUN S15°20'05"W, ALONG SAID R/W LINE, FOR 208.96 FEET; THENCE RUN N87°41'08"E FOR 891.20 FEET; THENCE RUN S15°19'04"W FOR 482.26 FEET; THENCE RUN S87°41'08"W FOR 23.38 FEET; THENCE RUN S02°35'18"E FOR 328.30 FEET; THENCE RUN S87°47'31"W FOR 331.83 FEET; THENCE RUN S02°34'25"E FOR 328.45 FEET; THENCE RUN S14°59'31"W FOR 687.50 FEET TO THE SOUTHWEST CORNER OF LOT 27, OF LAST DESCRIBED PLAT; THENCE RUN N87°57'13"E, ALONG THE SOUTH LINE OF LOTS 27, 26 AND 25, OF SAID PLAT, FOR 2194.74 FEET TO THE SOUTHEAST CORNER OF SAID LOT 25; THENCE RUN N87°59'25"E FOR 265.00 FEET; THENCE RUN N10°00'00"E FOR 1,000.00 FEET; THENCE RUN N02°00'00"W FOR 370.00 FEET; THENCE RUN N87°30'00"E FOR 320.00 FEET; THENCE RUN N33°30'00"E FOR 435.00 FEET; THENCE RUN N05°30'00"W FOR 475.00 FEET; THENCE RUN N55°44'51"E FOR 306.79 FEET; THENCE RUN S82°30'00"E FOR 360.00 FEET; THENCE RUN S41°30'00"E FOR 640.00 FEET; THENCE RUN N87°40'56"E FOR 445.00 FEET; THENCE RUN N34°25'47"W FOR 150.00 FEET; THENCE RUN N24°23'31"W FOR 1242.90 FEET; THENCE RUN N01°13'00"E FOR 277.03 FEET; THENCE RUN N02°37'49"W FOR 773.16 FEET; THENCE RUN N06°55'10"W FOR 200.00 FEET TO THE POINT OF CURVATURE OF A CIRCULAR CURVE TO THE LEFT; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CIRCULAR CURVE, CONCAVE TO THE SOUTHWEST AND HAVING FOR ITS ELEMENTS A CENTRAL ANGLE OF 50°29'44", A RADIUS OF 440.00 FEET, FOR AN ARC DISTANCE OF 387.78 FEET TO A POINT ON THE NORTH LINE OF THE NW 1/4 OF SAID SECTION 22; THENCE RUN S87°27'48"W, ALONG SAID NORTH LINE, FOR 451.24 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED TRACT OF LAND CONTAINS 290.57 ACRES OF LAND, MORE OR LESS, AND LIES WITHIN THE LIMITS OF THE CITY OF NORTH MIAMI, FLORIDA.

Exhibit "A" 5/17-3

NOTE: THE ABOVE DESCRIPTION RE-WRITTEN MAY 25, 1994.



MUNISPORT SITE PLAN

	SECOR INTERNATIONAL INCORPORATED	MUNISPORT CITY OF MIAMI EXIBIT B LOCATION MAP	30189-003-03 MUNISPORT 02/02/98

EXHIBIT C

METROPOLITAN DADE COUNTY, FLORIDA

ENVIRONMENTAL RESOURCES MANAGEMENT
POLLUTION PREVENTION DIVISION
SUITE 800
33 S.W. 2nd AVENUE
MIAMI, FLORIDA 33130-1540
(305) 372-6817

February 5, 1997

Mr. Bradley A. Jackson
Remedial Project Manager
South Superfund Remedial Branch
U. S. Enviromental Protection Agency, Region 4
100 Alabama Street SW
Atlanta, Georgia 30303

Dear Mr. Jackson:

The Department of Environmental Resources Management (DERM) has reviewed the documents listed below and offers the following comments.

Hydraulic Barrier Recovery and Monitoring Well System Preliminary Remedial Action Report No. 3; prepared for the City of North Miami by SECOR International Inc., ROK Environmental, Inc., and DCS Consulting Engineers, Inc.; dated November 1996, and received by DERM on December 27, 1996.

1. The report is acceptable. Be reminded that DERM has always maintained that further adjustments (pumping rates, depths of certain segments) to the extraction system may be required upon implementation and initial monitoring results of drawdowns and influent concentrations.

Draft Water Quality and Toxicity Reassessment Study; prepared for the USEPA by Bechtel Environmental, Inc. in consultation with ICF Kaiser Engineers, Inc.; dated December 1996, and received by DERM on December 20, 1996.

1. The draft report was considered incomplete in several areas.
   -Table 5-2 should include all values (salinity, temperature, pH, etc.) and the sampling time for all values used to calculate the chronic AWQC.
   -There should be a QA/QC section addressing laboratory certifications, data validation, and field instrument calibration records.
   -Diel salinity measurements and Figure C-1 in Appendix C show salinities at the ECC and WCC sampling points declining to zero at the peak of high tide and during the first part of the ebb phase. This extreme variation is suspicious and could indicate some type of system error. Any system error could have affected other diel field measurements. The difference in peak salinities measured at the ECC and WCC sampling points is inconsistent and should be discussed. The ammonia field

measurements should also be discussed, particularly with respect to the cause for the erroneous measurements and any implications on field parameter measurements.

2. Although it is impossible for this report to exactly duplicate the 1989 report, there are differences which could be significant. These include general groundwater levels (drought conditions in 1989 vs. normal wet season conditions in 1996), rainfall during the sampling period, and omission of acute toxicity tests using 10-14 day old Inland Silverside minnow as a test organism. Historical data from the South Dade Landfill indicates that elevated ammonia levels are more likely to be detected in the dry season (DERM Technical Report 94-01).

3. Phosphorus should have been measured in the toxicity samples to insure that an excess wasn't added to the samples prior to the algal studies. This may have been a factor in the clumping that was observed in the algal tests.

4. On page 23, the report states "This trend would indicate that within the mangrove preserve ammonia concentrations have been reduced, most likely through increased tidal flushing of the preserve and/or decreased ammonia discharges from the landfill, to the point where an equilibrium level has been reached." No evidence was presented in the report to substantiate decreased ammonia discharges or equilibrium ammonia levels.

The 1989 toxicity study showed clear ammonia problems at the mangrove preserve, and the 1989 study was sufficient on its own to require implementation of a remedy. However, a one-time toxicity study is not adequate to rule out adverse impact to Biscayne Bay, which has been declared an Outstanding Florida Water and is subject to state and county non-degradation standards. Ammonia levels in groundwater at the site are far in excess of DERM's standard and are considered a discharge to the Mangrove Preserve and Biscayne Bay. It is DERM's position that there are other effects of the leachate on Biscayne Bay that have yet to be evaluated - namely nutrient loading (not evaluated in the first study due to severe toxicity observed) and impact to habitat. A habitat assessment of the mangrove preserve and the adjacent area of Biscayne Bay may be more indicative of cumulative adverse impact than toxicity studies alone.

Draft Design Report; prepared for the City of North Miami by SECOR International Inc.; dated December 19, 1996, and received by DERM on December 23, 1996.

1. The proposed treatment method and modular design for the extracted water is acceptable in concept. The 95% document should include all engineering support calculations and

specifications as well as results from any pilot or scale design tests.

2. Consider a more diversified, natural wetlands for the final treatment step. This could reduce the need for biomass removal and provide wildlife habitat. Any biomass and/or sludge must be tested prior to disposal or consideration for land application.

3. The recovery well system (as per current submittal Hydraulic Barrier Recovery and Monitoring Well System Preliminary Remedial Action Report No. 3) was designed, installed and tested with the aim of forming a negative head barrier by pumping and intercepting ammonia contaminated groundwater before it reaches Biscayne Bay. To change some wells to injection wells is a major modification that needs much more documentation, including modeling.

4. The model used must be a particle tracking program such as MODPATH. Input parameters (K, drawdowns, mounding, porosity, etc.) must be supported with site specific field data. There must be a minimum of one cell in-between each pair of sources/sinks. There must be at least two layers - one to the depth of the wells and layer just below that. Model results must demonstrate no short circuiting or slippage between cells at the proposed flow/injection rates and proposed grout curtain geometries. It is recommended the modeling results be presented in an interim or revised report several months prior to the 95% design report.

5. If grout curtains/walls are used, QA testing will be required to verify that they are impermeable boundaries. The QA methodology must be specified early in the design process.

6. Additional monitoring wells will be necessary for verifying the effectiveness of an alternating positive/negative heads system. The number and placement of monitoring wells should be based on the modeling results. Specific goals for the degree of drawdown/mounding necessary for an effective barrier should be proposed and justified.

7. Additional monitoring wells are needed in the gap south of the south east lake in-between the line of vertical recovery wells and the horizontal recovery well, and north of the northern end of the horizontal recovery well. Be advised that the recovery well system may need to be modified or expanded depending on contaminant levels in those wells.

8. Discuss any anticipated maintenance of the injection wells. If maintenance requires well shutdown, discuss how hydraulic control will be maintained.

DERM remains willing to consider innovative technologies, however it must be demonstrated at the design stage (with modeling) and at the implementation stage (with monitoring wells, measured drawdowns, etc.) that an effective battier is formed. Another consideration is that such a major modification of the remedial design may slow down the project.

Therefore, other options for disposal of the treated effluent should be considered. These might include:

1. Using the western corridor of the Superfund site for shallow injection wells or recharge galleries,

2. Installing intermediate depth injection wells adjacent to and just inside the line of the extraction wells,

3. Using a more conventional fence and gate configuration for the extraction and disposal systems, and

4. Investigating use of the deep injection wells at the North Dade WWTP for disposal after on-site treatment (i.e. without any additional treatment by the WWTP).

The Department remains committed to early implementation of the remedy to curtail further discharges to the Mangrove Preserve and Biscayne Bay. We appreciate the opportunity to comment on this matter. Please contact me or Leslie Pope, P.G. of the Industrial Waste Section at (305) 372-6804 if you have any questions concerning the above or need further information.

Sincerely,

Robert E. Johns, P.E., Chief
Industrial Waste Section
WASTE MANAGEMENT DIVISION

LP
pc: Vivek Kamath, FDEP - Southeast District
Richard Tedder, FDEP - Tallahassee
Lee Feldman, City of North Miami

BJ

City of North Miami

776 Northeast 125th Street, P.O. Box 610850, North Miami, Florida 33261-0850

(305) 893-6511

February 6, 1998

Mr. Doug Yoder
Assistant Director
Miami-Dade County DERM
33 S.W. 2 Avenue, PH-2
Miami, FL 33130-1540

RE: CONSENT AGREEMENT BETWEEN MIAMI-DADE COUNTY DERM AND THE CITY OF NORTH MIAMI

Dear Mr. Yoder:

This letter will confirm our telephone conversation of February 2, 1998, wherein I represented that the 0.9 acre mitigation requirement contained within paragraph 33 of the Consent Agreement for the Munisport Landfill Site is not delineated on Exhibit B. It is understood that this requirement for the mitigation of 0.9 acres of wetlands (or DERM-approved equivalent) will be done at a site to be agreed upon by the parties.

This letter supersedes my letter to you of February 3, 1998.

Please let me know if you require any additional information.

Sincerely,

Lee R. Feldman
City Manager

LRF:adp

cc: John C. Dellagloria, City Attorney
Earl G. Gallop, Esq.
Scott Brown, RAC, SECOR

City of North Miami

776 Northeast 125th Street, P.O. Box 619085, North Miami, Florida 33261-9085

(305) 893-6511

July 8, 2003

Robert Ginsburg, Esq.
Miami-Dade County Attorney
Stephen P. Clark Government Center
111 N.W. First Street - 28th Floor
Miami, Florida 33128

Re: Proposed Resolution Approving Long Term Lease Between the City of North Miami (the "City") and Preserve Partners, Ltd., ("Preserve Partners")

Dear Mr. Ginsburg:

We have been in communication with your staff regarding the above-noted resolution and request presently pending before the Board of County Commissioners. In that regard, we wanted indicate that the City of North Miami would agree to:

1) provide notice to the County of all public hearings and proceedings at which the City is to consider land use matters affecting the subject site;
2) require the developer of any portion of said property to record, in the public records, a notice that the proposed development is within one mile of a wastewater treatment facility of County-wide significance and that notice shall be given to and signed by buyers contemporaneous with signing purchase contracts within said development; and
3) will comply with all terms and conditions of the Consent Agreement between the City and the Miami-Dade County Department of Environmental Resources Management as to the environmental remediation of the property.

Should you have any questions, feel free to contact me at (305) 893-6511, ext. 2100. Thank you for your assistance with this matter..

Sincerely,

Irma J. Plummer
City Manager

cc: John Dellagloria, Esq.
Mr. Michael Swerdlow
Mr. Sid Atzmon
Clifford A. Schulman, Esq.